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**HUMAN RIGHTS IN MEXICO: IMPLICATIONS FOR  
NAFTA AND U.S. BUSINESS**

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Y 4. SM 1: 103-29

Human Rights in Mexico: Implication...

**HEARING**  
BEFORE THE  
**COMMITTEE ON SMALL BUSINESS**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED THIRD CONGRESS  
FIRST SESSION

WASHINGTON, DC, JUNE 29 AND SEPTEMBER 30, 1993

Printed for the use of the Committee on Small Business

**Serial No. 103-29**



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TUESDAY, JUNE 29, 1993

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The committee met, pursuant to notice, at 11:07 a.m., in room 2359-A, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the committee) presiding.

Chairman LAFALCE. The Small Business Committee will please come to order.

Today, our committee convenes to more closely examine the human rights issues raised at our hearings—our committee's earlier hearing on February 25th in which we considered the business climate in Mexico. At that time, witnesses' reports of political, labor, and judicial human rights abuses were compelling.

The president for the nongovernmental Commission for the Protection and Promotion of Human Rights revealed that the United Nations Committee Against Torture met in November 1992 to review Mexico's record on human rights and implementation of the U.N. Convention Against Torture.

The United Nations Committee rejected the Mexican Government's report and assertions that great strides toward eradicating torture had been made. The committee found, "a distressing disjunction between legal reforms and actual practice."

This United Nations Committee instructed the Government to submit another report in 18 months.

This morning, we have an impressive panel of experts, all with front-line experience in Mexico, to provide the details of what is actually happening in Mexico.

When the United Nations World Conference on Human Rights opened in Vienna 2 weeks ago, Secretary of State Warren Christopher gave an impassioned speech on the role of human rights if societies are to be truly free and democratic. Secretary Christopher said, "In the battle for democracy and human rights, words matter, but what we do matters much more." He recalled with pride his chairmanship of the U.S. Government's first interagency group on human rights. I also recall his work at that time with considerable pride. I worked closely with him then.

Secretary Christopher also asserted that, "My country will pursue human rights in our bilateral relations with all governments, large and small, developed and developing, and we will weigh human rights considerations in trade policy."

I couldn't agree more with Secretary Christopher. Surely the Secretary will not have meant, could not have meant, to exclude NAFTA from this overarching principle.

As our potential newest free trade partner, we should be aware that Mexico continues to have its human rights problems. For example, just last month, Cardinal Juan Jesus Posadas Ocampo was murdered in the parking lot of the international airport at Guadalajara. The Mexican Government has changed its account of the incident, but there are disturbing reports alleging that the Federal Judicial Police had a hand in the slaying or at least in the get-away by the drug gangs.

In January 1993, President Salinas appointed Jorge Carpizo MacGregor Attorney General of Mexico who is in charge of the investigation into the cardinal's murder. Mr. Carpizo had been president of the Government's National Human Rights Commission and has had the confidence and respect of even the Government's severest critics, and we are pleased at that. The international community will certainly watch how Mexico investigates and prosecutes the perpetrators of this crime.

As an aside, I have been attempting to work with the U.S. Catholic Conference of Bishops because they, too, are very concerned for the treatment of their brethren in Latin America. We previously had a person from Buffalo who worked for the Conference of Bishops on Latin American affairs. He is now in Buffalo, Monsignor David Gallavin. I have been in conversations with him, too.

The State Department's most recent report on human rights concludes that incidents of abuse have declined but are still quite substantial. For example, the Human Rights Commission received 776 complaints of torture in its first 2 years, 1990 and 1991. Complaints declined sharply to 292 from December 1991 to December 1992, compared with 422 the previous year. But it is still roughly 300 complaints of torture. Incidents of arbitrary arrest and imprisonment occur frequently and are the most common complaint. Indeed there were 10,244 such complaints in the 2 years ending June 1992.

These are not just abuses against Mexican citizens. In 1992, the U.S. Government formally protested the death of two U.S. citizens while in police custody, allegedly suicides. In the year ending September 1992, 41 U.S. citizens complained of police abuse. By the end of 1992, the U.S. Government formally protested 16 cases of either torture or other mistreatment of U.S. citizens.

Now, there are those who say that the passage of NAFTA will promote or consolidate efforts to turn around human rights abuses because Mexico will be in the international spotlight much more. However, if NAFTA is to be agreed to, I believe it should be the carrot to clean up human rights abuses beforehand rather than after.

Given Secretary Christopher's announced U.S. policy on human rights, we should ensure that the process is in place first to adequately protect citizens in Mexico, but also to protect Mexican citizens themselves. The United States has moral and ethical leadership responsibilities on human rights issues, and surely we should state our expectations of nations with whom we might enter into



a free trade agreement quite clearly, quite specifically, and up front.

Today, our committee welcomes experts who are very familiar with human rights conditions in Mexico. Whether the issue is political freedom, the right to due process, or freedoms from egregious physical abuse and murder by those in Government positions, our witnesses this morning have firsthand experience with conditions in Mexico.

[Chairman LaFalce's statement may be found in the appendix.]

To begin our panel, we will hear from Mr. Carlos Salinas—no relative of the President Salinas—a Government program officer for Latin American and Caribbean matters for Amnesty International USA; Mr. Javier Livas Cantu, member of PAN, the opposition party to PRI; Mr. Juan Mendez, executive director, Americas Watch; Mr. Juan Manuel Arrigunaga, coordinator, the Families' Civic Front in the Yucatan; and Mr. Eric Rosenthal, a legal fellow at Minnesota Advocates for Human Rights.

I would like to point out that in addition to having a U.S. citizen on the panel, Mr. Rosenthal, we have two Mexicans, a Chilean, and an Argentinian. Who is that?

Mr. MENDEZ. I am.

Chairman LAFALCE. Mr. Mendez, we are pleased to have you present with us today.

Mr. MENDEZ. Thank you.

Chairman LAFALCE. I understand, Mr. Arrigunaga, that you were in Washington last week to present a petition to the Organization of American States, went home and came back to Washington especially for this hearing, and so a special thanks to you.

Mr. ARRIGUNAGA. Thank you.

I would now like to call upon our distinguished ranking minority member, Mrs. Meyers, for her opening statement. Mrs. Meyers asked if we couldn't have somebody from the U.S. Department of State, and as soon as she asked, we contacted four individuals. The request was made yesterday, so they were unable to supply a witness.

Mrs. MEYERS. Well, Mr. Chairman, the topic of today's hearing is human rights in Mexico and this is of course an issue which I and every member of this committee are deeply concerned about. However, I would like to state for the record that I am deeply troubled by the absence of any representative of the State Department at today's hearing. I think we have known for some time we were going to hold this hearing, and I think asking a representative from the State Department yesterday is hardly adequate.

During most of my years in Congress, I have served not only on this committee, but also on the Foreign Affairs Committee. In that capacity, I have probably attended dozens of hearings on human rights issues spanning the globe. To have a hearing addressing such an important issue as human rights in Mexico without having a witness from our State Department is, in a nutshell, regrettable.

I am and always have been a strong advocate for human rights. I am very familiar with most of the groups testifying here today, certainly Amnesty International and Americas Watch with whom I have worked, and I admire their work very much. I support their tireless efforts on behalf of human rights. However, this does not

mean that we should hold an imbalanced hearing talking only about what is negative about a country and not some of the things that are positive.

Mr. Chairman, my concerns over a trade agreement such as NAFTA are well known. However, I think there is a big difference between being opposed to a particular trade agreement and being negative about an entire country and what they are trying to do. Mexico has emerged as a strong trading partner of the United States, and I believe that President Salinas is making sincere efforts to liberalize the Mexican economy and the Mexican political system.

Moreover, the human rights problems that have been endemic to Mexico for much of this century, I think he is trying to address. I believe that we have his Government to thank for that. Since we have no witnesses here today from the State Department, I would like to have a copy of the State Department's most recent country report on human rights in Mexico included in the record of this hearing.

[The State report on human rights may be found in the appendix.]

Mrs. MEYERS. I also request that the State Department submit a formal statement on this issue for the record.

Mrs. MEYERS. Finally, Mr. Chairman, if we are to continue to have these hearings on NAFTA, I ask that we start having some hearings where we can have small businesses that have some experience in commerce with Mexico come in and testify.

Thank you very much.

Chairman LAFALCE. Thank you very much, Mrs. Meyers. Of course, it wasn't until yesterday that I got your request to have somebody from the State Department. We complied immediately. But also in real candor, these hearings don't exist within a vacuum.

There are hearings being held in the entire U.S. Congress, and we have had a Bush administration, totally supportive, a Clinton administration bend over backwards trying to pass it, maybe with some cosmetic supplemental agreements. The leadership of both parties is totally supportive.

So, it has been difficult to get the problems with NAFTA, the difficulties with the human rights conditions in Mexico, surfaced and this is just trying to bring a little bit of balance, a modicum of balance into the total picture of things.

Insofar as the State Department, I wanted to hear from these individuals, because I think these individuals are going to give us the unvarnished facts as they have seen it. To tell you the truth, when the State Department comes in, whether it is under the Bush administration or under the Clinton administration, it is going to be so sugar coated, its going to have to go through OMB, and they are going to be so sensitive to the political ramifications of it and to what its testimony is going to do to the probable chances for successful passage of the NAFTA legislation, that we are not going to be able to get to the unvarnished facts.

So, I have to use a little bit of discretion as chairman. Also, I have to have a certain sensitivity as to what your concerns are. I was more interested in hearing from them. As soon as you said you

wanted someone from the State Department, I said, "All right, we will bring them." All they would have said, "we still have a lot of problems in Mexico," but there have been some improvements under Salinas.

In any event. We have what we have right now——

Mrs. MEYERS. I don't wish to be argumentative, but in the future, I think this committee learns a great deal more when we have a balanced hearing. That is all I am trying to convey.

Chairman LAFALCE. Sure. If you make suggestions in the future, I would take them into consideration. The more advance in the future they are made, the more I will be able to take them into consideration. As soon as I heard yesterday you wanted somebody from the State Department, I said, "Sure." We asked four individuals.

We are going to have a take a temporary recess because we have a vote going on right now. There could be a number of votes. So, we will be back. I can't tell you when because I don't know how many votes we are going to have.

Mrs. MEYERS. This request was made last Friday, Mr. Chairman. I just want to get that on the record for the record.

Chairman LAFALCE. OK, fine. It was made last Friday, but I got it Monday morning, and I don't know what time on Friday.

We will reconvene as soon as we can after the last vote. Thank you.

[Recess.]

Chairman LAFALCE. We will reconvene for 2 seconds. It was 6 p.m. last Friday. Thank you.

[Recess.]

Chairman LAFALCE. The Small Business Committee will resume its hearing.

I would like to apologize to the members of the panel, especially, for the unfortunate long delay that we had to take, but one of the difficulties with Congress is that so often we try to do so many things at one time. I didn't realize that we would be going into session at 11 o'clock today until very late last night.

We were in session last night until about 1 a.m. or so. Unfortunately, a series of votes was called for shortly after we convened. As a matter of fact, from the time I left until now, we had seven votes, and we didn't realize we were going to have seven votes. So, we couldn't return, and we had to regrettably inconvenience you.

I again apologize for that, but that is part of the legislative process. Hopefully, we can reform our process to minimize, if not avoid, this type of inconvenience to all.

Now, it is going to take some time for the Members to get back here. The vote just concluded. I hope the minority staff will call their Members and alert them that we are reconvening, and I direct the majority staff to do that for our Members.

As we were leaving, Mrs. Meyers and I were walking out together, and she told me she had a speech she had to give over at the noon hour. I don't know if that is going to preclude her return, but I hope not. I hope she will be joining us shortly, too.

With that, what I would like to do, gentlemen, is put the entirety of your remarks in the record as if they are read. I will do that, and then I would ask you to make your presentations. I would ask



you to either read your testimony or summarize your testimony, whichever would be shorter, but no more than 5 to 10 minutes apiece so we can have dialog amongst the members of the panel. Thank you.

Our first witness will be Mr. Carlos Salinas. Mr. Salinas was born in Chile, did his undergraduate work in history and economics at the University of Pennsylvania, and obtained his master's from Georgetown University in Latin American studies. He has been involved with Amnesty International since 1986.

Mr. Salinas.

**TESTIMONY OF CARLOS M. SALINAS, GOVERNMENT PROGRAM OFFICER, LATIN AMERICA AND THE CARIBBEAN, WASHINGTON OFFICE, AMNESTY INTERNATIONAL**

Mr. SALINAS. Thank you, Mr. Chairman. Just to clarify things, my name is Carlos Salinas Cordova. I wanted to make sure there was no mistaking with Salinas de Gortari.

One of the points I would first like to make is that I hope, in the name of Amnesty International, and, hopefully, in the name of other panelists here, that Congresswoman Meyers' discomfort with there not being a balanced hearing reflects a concern that there be a balance of governmental and nongovernmental representatives, and we hope that is what she was alluding to. As you know, we try to strive for as balanced a perspective as possible and have been attempting to do that ever since we were founded.

During the course of all these discussions around the free trade agreement, we have been, in Amnesty, disappointed with the lack of attention directed by successive administrations to the issue of human rights. We hope that, whenever there are bilateral or multilateral discussions, the issue of human rights is brought to the forefront.

However, we have not been disappointed with the action of Members of the U.S. Congress. For instance, Mr. Chairman, your committee held a forum in September 1991 talking about electoral issues, and while electoral issues do not fall within the domain of Amnesty International's work, we do recognize that electoral issues are indeed part of international treaties relating to human rights.

That same fall, Representative Torricelli held hearings in his Western Hemispheric Subcommittee at which he stated that he felt that systematic violation of human rights and fraudulent electoral practices in Mexico are nails in the coffin of a free trade agreement. While Amnesty does not have any position whatsoever on the North American Free Trade Agreement, we do welcome the centrality accorded to human rights in his remarks.

Also, in the fall of 1992, Representatives Engel, Ravenel, and Gilman sponsored a letter that was sent to President Salinas that was cosigned by 32 other Members of Congress raising human rights issues.

The two points I am making with this is, first, that it is widely recognized that there is a human rights problem in Mexico, a fact which is underscored by congressional action. Second, we would like to challenge other Members of Congress and certainly the administration to take heart of the human rights issue and raise these concerns publicly such as you have, Mr. Chairman, and other

Members of the Congress. We hope that this hearing is a prelude to greater action on the part of the administration pertaining to human rights.

Chairman LAFALCE. We talk about the MFN with China. We talk about human rights. When we talked about our relations with Argentina under a military leadership, Chile under a military leadership, we talked about human rights within the economic context. Most people are unaware of the human rights condition within Mexico. It is one of the best kept secrets within the United States of America.

For us to be considering not only closer union but a free trade agreement without discussion of this subject would be terribly remiss, maybe a grievous, grievous omission.

Mr. SALINAS. The ongoing concerns of Amnesty International were recently presented in a report called Mexico, the Persistence of Torture and Impunity, and if Mr. Chairman would be so kind, we would like to enter that report into the record.

[The report may be found in the appendix.]

Mr. SALINAS. What we have found is that torture continues to be widespread and endemic in Mexico. Such tactics of torture include beatings, severe beatings, the forcible introduction into nostrils of carbonated water, many times with chile powder, deprivation of oxygen by either holding a bag over a person's head or submerging the person's head in water, cigarette burns, electric shocks, and suspension by the wrists—

Chairman LAFALCE. Is this something that is isolated or is this something that is prevalent, widespread? Individuals will sometimes point to a situation that happens in the United States and people in the United States with other interests will say that is an isolated instance, don't try to make it sound like that represents the state of affairs in the United States, the general rule. It doesn't.

To what extent is this an isolated instance in Mexico as opposed to something that is widespread?

Mr. SALINAS. Well, Amnesty International has found that the use of torture is widespread and is very much a failing of the system of administration of justice. We find that the use of torture happens in the context of criminal investigations whether it be a suspect or someone grabbed from the street in trying to find a criminal.

So we have found that this is actually very much prevalent in Mexican criminal justice. We have also reported on extrajudicial executions in Mexico including the January 1992 killing of Tomás Diego García, a Mixe Indian who was killed point-blank and despite U.S. congressional interests in this matter, despite recommendations from the National Commission of Human Rights of Mexico, the killers have not been brought to justice.

That is one of the main points our testimony brings forth and that is that impunity is very much prevalent. Those who engage in human rights violations in Mexico are allowed to go free.

Now, sometimes the Mexican Government responds and says, well, we have dismissed so many officers. Well, that may be true, but we don't know what these people were dismissed for. In fact, we have found that under the 1986 law for the prevention and pun-

ishment of torture, not one official to our knowledge has been indicted and sentenced under that law.

Chairman LAFALCE. When was that law passed?

Mr. SALINAS. That was passed in 1986, and has been subjected to reforms. The 1917 Constitution of Mexico precludes ill-treatment. The 1917 Constitution of Mexico precludes incommunicado detention. It calls for a defendant to be brought within 24 hours before a judge.

What we find is that, despite repeated measures to reinforce protections within the Constitution, despite expansion of the protection, despite expansion of prosecutorial powers aimed toward people who have engaged in torture, impunity is still rampant.

We find when we do an analysis of the situation that on paper Mexico shines. The 1917 Constitution is exemplary. The laws that have been passed relating to human rights are excellent examples of what can be done legally to curb human rights violations.

The institutional reforms are positive, such as the establishment of the National Commission of Human Rights. If such an institution were given the power to carry out its functions, and not only to just make recommendations, but to actually enforce its recommendations, we believe that then indeed there could be a curbing of human rights violations.

However, legal and institutional protections do not achieve their objectives if there is no political will to carry them through.

Chairman LAFALCE. This is very important, because you have paper protections but no enforcement mechanism. People in the United States who are talking about supplemental agreements are not talking as forcefully about enforcement mechanisms, and I am concerned that we can supplement agreements. But if you don't have an enforcement mechanism within them, the supplemental agreements wouldn't be worth the paper they are written on.

Mr. SALINAS. That, perhaps, is something that people who do work in that area could consider. Obviously, Amnesty does not have any position on trade issues or environmental issues.

Chairman LAFALCE. I realize that.

Mr. SALINAS. One of the things that we must point out, then, is that there are some very positive laws. The Salinas administration has done some positive reforms, including the establishment of the National Commission. In fact, it was granted constitutional status, but we must stress that torture and impunity continue unabated. We find that torture continues to exist at historical levels.

Chairman LAFALCE. I said there was a drop from around 400 and some in 1991 to about 290 some in 1992. So, that is the decline of roughly 100 cases of torture. Does that accord with your figures?

Mr. SALINAS. The numbers that Amnesty received are at historical levels, business as usual.

Chairman LAFALCE. Can you give me some figures for that?

Mr. SALINAS. I don't have precisely what number of denunciations, what number of records we have received. But I can say that one of the caveats of looking at these numbers is that these are numbers of denunciations perhaps made to the National Commission of Human Rights.



Chairman LAFALCE. These were written official reports to the Human Rights Commission; these were not the number of instances?

Mr. SALINAS. They could certainly underestimate the actual number on two counts. On one count, people could perhaps be disillusioned by the fact that there hasn't been any real prosecution of human rights violators and, therefore, might find that they would not bring forth an accusation.

Second of all, there have been incidents in which people are threatened, including cases of people being tortured when the police found that a denunciation was going to be made. So, you have two different caveats as to the denunciation.

Chairman LAFALCE. People say Salinas may be very well intended himself, but he doesn't have control over the Federal Judicial Police. Could you comment on that?

Mr. SALINAS. The President is ultimately responsible for what Government officials do. The Attorney General is responsible for people under his charge. The Public Ministry is ultimately responsible for what the police do.

Chairman LAFALCE. I guess the point I am asking is, do you think they would like to see the Federal Judicial Police conduct themselves much better than they have been?

Mr. SALINAS. If one looks at what public declarations have been made, one could certainly assume that there is indeed the intent of reforming and ensuring that torture does not continue occurring.

But it is not enough to just state publicly that one wants a situation to improve. One has to couple that with action. The action that we have been calling for is prosecutions of human rights violators.

Chairman LAFALCE. You just haven't seen that?

Mr. SALINAS. We have not. In fact, we have been shown numbers. We have been shown numbers of people dismissed, but we haven't seen how many of these people have actually been prosecuted for human rights crimes such as the use of torture.

As I stated earlier, we have not seen one person who has been prosecuted for the use of torture under the 1986 law.

Chairman LAFALCE. Not one prosecution under that 1986 law.

Mr. SALINAS. Not that we are aware of. Let me tell you an incident.

Chairman LAFALCE. I will go to the incident, but I just want to get a feel for this. We have heard of human rights abuses in the past, and I don't want to go into the history. I just want to think of January 29, 1993. I mean June 29, 1993.

Currently, within the Americas, which country would you think would be the worst country insofar as human rights record is concerned? Is Mexico the best, about average, near the very bottom, or the very worst? What is your judgment on that?

Mr. SALINAS. We don't compare countries. We don't say one country is better than another. That is something that people have to make up their mind for themselves. Institutionally, we believe that if we were to compare countries, we would actually be belittling human rights abuses in another place.

One could talk about 300 "disappearances" in one country and 1 "disappearance" in another country. Well, that one "disappearance" is one "disappearance" too many.

Chairman LAFALCE. Is there any type of ratings game, though? Is the human rights situation in Mexico better or worse than in Canada? I know how I would come down on that question. That is an easy one for me. But what about Mexico with respect to Brazil? Or Argentina, or Chile, currently?

Mr. SALINAS. There again, I probably have my own personal viewpoints on whether one country is doing better than another, but Amnesty does not say that one country is better than another.

Chairman LAFALCE. Would you be willing to share your personal as opposed to Amnesty International's perspective?

Mr. SALINAS. My personal viewpoint is that Mexico does have a very serious problem with the use of torture and does have a very serious problem of impunity as, Brazil, as Guatemala, as Colombia, and as Peru.

In Peru, you have many more "disappearances" than you have in Mexico. You have incidents of torture in Chile, but you can't really compare. I don't think personally, even, that one can say, "well this situation is better." There are problems in Canada, particularly relating to the indigenous peoples in Canada.

Chairman LAFALCE. All right. Please continue.

Mr. SALINAS. Thank you. So, basically, we are approaching this from a bottom line perspective. There have been positive reforms. There have been positive institutions created, but the incidence of torture continues at the same levels as in the past. Impunity is still a very serious problem.

We must look at what would be appropriate benchmarks to evaluate whether the reforms are being effective or not. Obviously, one of the mechanisms, if you will, one method of evaluating would be to look at the volume of incidents. As I maintained earlier, the incidents of torture remain at historical levels.

Certainly, we don't have the "disappearances" that did exist in Mexico in the late 1970's and early 1980's. So, that would be one way to look at it. But when we look at volume, we are ignoring the systemic aspects. In other words, do the incidents represent a pattern or a systematic modus operandi that we can signal? Because if they do, then perhaps volume could be simply a function of international attention or national interests. In other words, ebbing when there is a lot of interest, flowing when there isn't.

When we look at the systemic aspects, when we look at institutional aspects of human rights violations, I believe we come to what is truly one of the more important, if not the most important benchmark in human rights violations and trying to curb them in Mexico, and that is the problem of impunity.

As stated earlier, we find that those guilty of human rights violations remain at large. Sometimes people are transferred from one post to another. Sometimes people are actually promoted, and then it is claimed that such and such person has been dealt with. We don't find that to be enough. We don't find dismissal to be tantamount to prosecution. Certainly, we don't find prosecution under some other law to be tantamount to prosecution under human rights law.

So, if we want to address the problem of human rights in Mexico, and whether or not the reforms are being effective, we have to look at the issue of impunity. Are people being prosecuted? Once pros-

ecutions begin for human rights violations, only then can we begin to say that the reforms are being effective. Once people are prosecuted, those who engage in human rights violations realize that they cannot go around torturing people and get away with it as they have in the past.

Also, with prosecutions you address the systemic aspect of human rights violations. You are addressing the structural aspect and you are finally talking about giving the paper protection and the institutional reforms real weight. Only then can you say there is real political will to eradicate human rights violations.

Chairman LAFALCE. All right. Mr. Salinas, thank you very much. [Mr. Salinas' statement may be found in the appendix.]

Chairman LAFALCE. We are going to have to move on to our next witness, Mr. Javier Livas Cantu.

Mr. Livas.

### TESTIMONY OF JAVIER LIVAS, OFFICER, OPPOSITION PARTY, PAN

Mr. LIVAS. Thank you, Mr. Chairman. I want to thank you for the invitation. I want to clarify that I am here on a personal basis, not as a member of any party. I am here because I think that human rights is a universal concern.

Chairman LAFALCE. You are a citizen of Mexico, correct?

Mr. LIVAS. I am a citizen of Mexico, yes. I think that the human rights are a concern of what we could call world citizens, and it is in this capacity that I am here today.

I regret the absence of some of your colleagues. I hope it doesn't mean that it is due to a lack of interest in human rights affairs.

Chairman LAFALCE. No; I think they anticipated that the hearing would be over by this time. They weren't planning on the votes and may have had other things scheduled or they may be at lunch themselves.

Mr. LIVAS. Fine. Anyway—

Chairman LAFALCE. I again apologize.

Mr. LIVAS. What I will try to do with my statement is to provide you and anyone who is interested with sort of an insider's look at the Mexican political system and constitutional system. I hope that my intervention here today will help you or whoever is interested to interpret what is going on in Mexico for whatever purposes you may wish to follow.

It is clear that the free trade agreement is like designing an interface for two different systems. But I wish to provide a language that will help you understand the problems of designing this interface.

Many scholars compare the Mexican Constitution to the U.S. Constitution. They say that we copied your form of Government. Both constitutions have a Bill of Rights, establish a republic made up of States united in a federation, with three branches of Government: A bicameral legislature, an executive, and a supreme court. It follows that Mexico should have a similar protection of human rights.

But I think to truly understand the current situation of human rights in Mexico, there is one first and major consideration to make. The Constitution of Mexico is not in any true sense a law.



It is a plan. It is a plan that was written by the revolutionaries of 1917.

At that time, the democratic practices in Mexico did not exist. There was no democratic culture. It was not a true federation. They tried to get the plan going and created a strong presidency, more in the tradition of a central government. Not surprisingly, the plan never took off.

It was until 1929 when a single party was created that the plan began to have a chance, or so it seemed. The party entrusted with carrying out the plan of the revolution is now what we call the PRI. But recently, the PRI gave up fulfilling that plan. Perhaps the plan was not a good one, but with the abandonment of the plan, so, too, went the idea of a society ruled by law.

Chairman LAFALCE. Mr. Livas, was it true that one time you were a member of PRI?

Mr. LIVAS. Yes; in a sense I was, because my father was a governor of the State of Nuevo Leon, and I was sort of born in the PRI. But the PRI is a very strange animal. You don't have to belong to the PRI to be a member of the PRI. You can be born into the PRI. You are a member of PRI insofar as you don't oppose the PRI.

It is not that you need a credential or an application to become a part of the PRI. You are automatically considered part of the PRI if you don't oppose the Government. If you cooperate with the PRI, you are considered a Priista. That is the way it is, that is, since I was in the PRI. I resigned after the July elections in 1985, convinced that the PRI would not change from within. It needed more external pressure to change.

Chairman LAFALCE. You have written several books on this, have you not? Municipal Bureaucracy and Corruption; Cybernetics, the State and the Law; The Book of Power, et cetera?

Mr. LIVAS. Yes; those are books I have written all connected to what I am doing now. In a way, yes.

Well, I see that there is a parallel law, a parallel Constitution, an unwritten Constitution that is now serving as law in Mexico. The purpose of this really supreme law is to preserve the current Government in power. It could be called presidencialismo. The present Government is an inheritor of the revolutionary movement, but certainly not its guarantor anymore.

Now, this statement might seem exaggerated for the untrained eye, but there is much evidence around that proves that this is the case. Recent changes in the Constitution show that the situation is not only not improving, but perhaps it is becoming worse.

In this sense, I disagree with those who say reforms are fine, and we just have to keep working at the reforms. The truth of the matter is that the reforms the Constitution made, in many instances are not a step forward, but a step backward. I am going to prove my case.

Chairman LAFALCE. I heard that a lot of the privatization that is taking place, which is theoretically economic reform, has been to some friends of the PRI's, a great many of whom who have offered upon request about \$25 million apiece in order to advance the interests.

Mr. LIVAS. I think that is a great embarrassment for our country. This is correct.



Well, I would like to review, this, and I will say, if we take human rights protection as the measure of the adequacy of the constitutional system, then the particular features of the original Mexican Constitution stand out as very lacking in this respect. But in addition to this, considering the current practices in the application of law, you would have to conclude that the Government is not only the major offender of human rights, but also an obstacle to the achievement of international standards.

Now, I want to review some of these changes made to the Constitution as far as electoral laws and other issues are concerned, and you shall see what I mean. If you consider electoral laws, there are three points to make. First, the revolutionary Constitution did not say that it was the Government's responsibility to organize elections.

The newer Constitution, however, says it very clearly. This addition clearly displaces the idea contained in the original Constitution in article 39 that considers the people at large as the ultimate sovereign. So, as a result of this modification they made, then it is the Government that controls all electoral bodies, and they do it constitutionally.

Now, the Constitution has also been amended with the governability clause which was added in 1987 as a safety valve measure that would assure the ruling party an automatic majority in the Congress in future elections.

Chairman LAFALCE. I don't understand this governability clause. Could you explain that a bit, please?

Mr. LIVAS. Yes; of course. The governability clause is an amendment to the Constitution that, very simply stated, means the following: A party that would win more votes in the direct contest for Congress would automatically get control of the Congress, let's say, 50 percent plus one Congressmen, even if he didn't have 51 percent of the votes.

This was put in the Constitution because we had just been through the 1985 and 1986 State elections and the Government was anticipating problems for 1988, so they changed the Constitution. They had the power to change it. They had the 66 percent majority. They changed it so that any party that would win more seats than any other party would automatically get 51 percent.

Chairman LAFALCE. So, the governability says if you get a plurality, you automatically get a majority.

Mr. LIVAS. No; what it said, for example, if you had six parties in Mexico, a party that would get 20 percent of the votes could win a majority.

Chairman LAFALCE. That is the most?

Mr. LIVAS. Let's say, for an example, if a party got 20 percent of the votes and all the rest got, let's say, 15 or 10 percent, the party with the 20 percent would automatically get 51 percent of the votes in Congress, even if it only had 20 percent of the total vote.

Chairman LAFALCE. I think that is what I meant when I said if you get a plurality like 20 percent and nobody else gets more than that. You have a plurality, then you automatically get the majority of the votes.

Mr. LIVAS. Absolutely. It is an automatic majority not having anything to do with the true composition of the vote. This was done

in anticipation of the problem that could arise in 1988, and it proved to be that they would have needed this although they then provided themselves with a majority through fraud, the percentage that is, and said that the Government came up with 50.74 percent.

OK. This is a very strange inclusion in the Constitution because it was not part of the original Constitution in Mexico. A similar provision has been declared a violation of human rights in Paraguay. I personally sued the Government in the OAS, representing some local Congressmen from Mexico.

We have a lawsuit that is a denunciation that is waiting for an opinion of the Inter-American Human Rights Commission where we are saying that the governability clause is a true violation of the convention because it doesn't give the same weight to every vote. It is a discriminatory clause.

Chairman LAFALCE. Could you go on to your next point.

Mr. LIVAS. Yes; the third thing to consider in electoral laws is they are not stopping the current electoral practice by which the Government is making the most of its monopoly on the practice of pork barrel politics. An example is the PRONASOL Program.

Chairman LAFALCE. What is the PRONASOL Program?

Mr. LIVAS. The PRONASOL Program is a federally sponsored program that goes to the States, gets money from the States, and then embarks on different community projects, but all is done through the authority of the Federal Government and controlled by the President and his ministers directly.

So, actually, the thing is that all public expenditures are controlled for political purposes to benefit the PRI party, the dominant party. In the United States, you have pork barrel politics and both parties can sort of negotiate who does what where. But in Mexico, imagine the pork barreling is being done by one party only, because only one party decides where the money gets invested.

It gives a tremendous leverage for electoral purposes to the party of the Government which is the official party. That is the point I wanted to make here. It might be hard to understand, but that is the way it works.

Chairman LAFALCE. If you could continue.

Mr. LIVAS. Yes; now, there are other examples of human rights relations, for example regarding the freedom of the press. We still have freedom of the press guaranteed in the text of the Constitution. But there are many ways that it is being thwarted.

For example, there is the Government's active control of news media through graft and corruption. This is very open. Everybody knows that it exists. Then we have the way the Government plays with the monopoly it has on the issuance of concessions to operate radio and TV stations.

All of this is used skillfully for political purposes also.

Chairman LAFALCE. Can individuals go into the courts in Mexico and say that the Government is denying us access to a TV station because they don't like our politics and have any chance of succeeding?

Mr. LIVAS. None that we know of. Nobody has ever challenged that. They don't even think of challenges because they know it is of no use. Nobody who has concessions is going to say we are being censored or this or that. It is a self-censored system because every-

body fears the Government taking away the concessions. It has very skillfully evolved through years and years of this monopoly of the PRI over everything that happens in the country.

Now, another interesting feature is, for example, that our President has never, and will never, submit himself to an open question news conference. Never.

Chairman LAFALCE. You mean since December 1st—

Mr. LIVAS. No; never. I mean never in the history has a Mexican President submitted himself to an open questions news conference. Everything is arranged.

Chairman LAFALCE. What do you mean by arranged? Do they never have news conferences?

Mr. LIVAS. No; they will lecture the newsmen on what they can ask and not ask, and if they don't accept, they won't get in.

Chairman LAFALCE. So, they are not allowed to ask questions or they don't ask questions.

Mr. LIVAS. It never happens. Nobody has ever told a President, "What do you think of the corruption in the electoral process?" a direct question like that. Never.

Chairman LAFALCE. That is rather amazing. I just don't think the American Congress has any conception of the nature of at least the practices in Mexico, if not the written Constitution.

Mr. LIVAS. That is the same feeling I have.

Chairman LAFALCE. Please continue.

Mr. LIVAS. You are really ignoring how the system works in Mexico and how it has been kept the biggest secret, for such a long time.

Now, if I may proceed, in regards to the economy, the 1983 constitutional reform incorporated the idea that centralized planning was an executive prerogative and that Congress had nothing to do with planning the future of the country.

Now, his reform has been serving as a basis for control of all economic activity in the country. For example, the so-called economic pact, which is a wage and price control decree, is an example of this policy in action. Now, executive accountability to Congress is written into the Constitution, but that is as far as it gets. Congress' control is null.

The presidentially appointed Congressmen of the PRI's have voted a law where the President is allowed to change the amount of expenditures on any item of the budget. At the very end of the income and expenses law, there is a provision that says the President can change any expenditure if it is done as part of the reorganization of the Government.

So, actually, the whole budget of the country is handled as if it were the personal property of the President. He can change any expenditure, cancel it, increase it, or whatever. There is no control.

Chairman LAFALCE. That in Latin America is as good as a line item veto.

Mr. LIVAS. Much better; much better than the line item veto, because here the Congress would say this is what you can spend it on. Over there, the budget is a plan but the President has the final word. There is a vetoing power, but not to only send the law back, but to change it as he acts. That is the way it works.

Chairman LAFALCE. If we could go on to your last point.



Mr. LIVAS. Yes; public security. I am going to be very brief.

I have heard all of the testimonies, the Americas Watch and everybody. I appreciate the effort they make investigating all of this, but this is not a mystery to anybody who knows anything about how the system works in Mexico. Public security is managed with a criteria that can be labeled as managing by scandal. Police are removed only when and if scandal erupts. The same is true for drug traffickers; they are removed only if scandal erupts.

The Cardinal Posadas assassination in Guadalajara is proof of that. Nothing was going on. After the killing of the archbishop, then there were dozens of detentions all over the country, security houses and narcotics-related detentions because of the scandal. Spin control, you call it. That is the way it is managed.

Torture, I think, is part of a widespread practice of intimidation that helps the Government maintain its credibility as the one in power. It is a political tool which is also managed by scandal. It gets too loud, maybe it will subside, and then off they go. Gets too loud again, maybe they will react. It is a successive adjustment mechanism. It is not a rigorous fight against torture all the time.

People are more scared about the proceedings before the trial when they are arrested than the punishment, the jail terms, or sentence. Jail terms are sometimes a paradise. The jails are havens for the narcotic traffickers. There is a lot of narcotic trafficking being run from the jails through cellular phones. That is also a thing you can add here.

Now, I want to say as I conclude, that the violations of human rights in Mexico are structural and heavily linked to the idea of sovereignty of the people. Concern over any transgressions of human rights is a universal concern, but Mexicans, and especially the Government, have a hard time accepting any form of foreign pressure or intervention.

For example, the Mexican Government has rejected even considering any suggestion made by the Inter-American Commission of Human Rights in regard to electoral laws. Finally, it is not for me to draw conclusions on how this situation may or may not affect the North American Free Trade Agreement. I come to submit to you what I consider to be the facts about our unique system of government.

[Mr. Livas' statement may be found in the appendix.]

Chairman LAFALCE. Thank you very, very much.

Our next witness is Mr. Juan Mendez, the executive director of Americas Watch.

Mr. Mendez.

#### TESTIMONY OF JUAN E. MENDEZ, EXECUTIVE DIRECTOR, AMERICAS WATCH

Mr. MENDEZ. Thank you, Mr. Chairman, for this opportunity to present the views of Americas Watch on human rights in Mexico. As an organization that works on human rights, Americas Watch considers trade issues as lying outside its narrowly defined mandate. For that reason, we take no position on the advisability of reaching the NAFTA agreement. On the other hand, we believe that the NAFTA negotiation provides an important opportunity to raise human rights issues both in the United States and in Mexico.

From the start of discussions about NAFTA, we have urged the Bush and the Salinas administrations, now the Clinton administration, to place human rights concerns squarely on the table.

The preamble of NAFTA includes language, and the text of NAFTA does include some rights or some pledges about rights that are squarely within our mandate. I mean by that labor rights, but we understand also that those stated goals about labor rights will only be meaningful if they are combined by strong complaint mechanisms, so it is our position also that there should be strong entitlement mechanisms for all of the rights that are included in or will eventually be included in the negotiation, and we have joined others in proposing that the most practical solution for creating meaningful mechanisms is for all three countries that are going to be a party to NAFTA to be bound by the decisions of the Inter-American Court of Human Rights, the judicial body of the Organization of American States, that already has a sterling reputation for protection of human rights in our hemisphere.

Mexico is the only one of the three countries that is presently a signatory of the American Convention, which is the treaty that the court implements, but, unfortunately, Mexico has not accepted the compulsory jurisdiction of the court. On the other hand, Canada has begun the process of signing and ratifying the convention, and we were pleased to see Secretary of State Warren Christopher recently announcing that the American Convention, which was signed by the United States in 1977, will be submitted to the Senate for ratification soon.

Chairman LAFALCE. It is rather scandalous in our own country that we have had a number of agreements that we entered into in the 1970's that have still not been submitted to the Senate for ratification.

Mr. MENDEZ. We agree, Mr. Chairman, but, fortunately, there seems to be movement in that direction.

Chairman LAFALCE. Yes; we have taken the initiative of Secretary Christopher, and we are going to be hosting a seminar on those treaties. Do we have a date? July 20th.

Mr. MENDEZ. We would hope that all three countries then not only ratify the convention but make the desirable commitment to accept the compulsory jurisdiction of the court.

With respect to human rights in Mexico, we have been trying very closely to monitor the situation since 1989. The Mexican Government's response to publicity about human rights abuses has been extraordinary.

Beginning about the time of the first announcements that Mexico and the United States would begin negotiations on a free trade agreement, the Mexican Government instituted a series of human rights reforms, including the formation of a National Human Rights Commission, the passage of human rights legislation, and the replacement of key law enforcement officials on human rights grounds.

While the Mexican Government's increased attention to human rights is readily apparent, it is more difficult to assess the extent to which human rights conditions in Mexico have really improved. The Government has worked hard to create the impression that it

has the human rights situation under control and that improvements have been dramatic.

Yet, at the same time, serious human rights problems continue.

One of them is torture and abuse by police and security forces. Mr. Salinas has spoken about that. So, in honor of brevity, I will just mention that the Federal Judicial Police has been the most notorious human rights violator, even during the Salinas term. The agents of the Federal Judicial Police have gotten away with torture and even murder without being prosecuted, much less convicted.

Recently, President Salinas has appointed a new Attorney General who has immediate jurisdiction over the Federal Judicial Police, and that has been a welcome appointment because Mr. Jorge Carpizo has distinguished himself as the President of the National Commission of Human Rights created in 1990. In 2½ years, the CNDH, the National Commission of Human Rights produced—

Chairman LAFALCE. I might point out that it is my judgment that hearings of this nature could help the effort to bring about the type of reforms attention to problems and that can be helpful.

I think the hearings that we have conducted in the past have been helpful in that effort. Our intention is to be helpful, be productive not counterproductive.

Mr. MENDEZ. So is ours, Mr. Chairman, and we do think it does help. We think it strengthens the hands of those who are serious about reform in Mexico. They only do that if we speak frankly and honestly about the limitations of the reform effort and, in that sense, it is important to note that most of the recommendations of the National Commission in 2½ years were precisely directed to the Federal Judicial Police.

Yet, most of those recommendations were largely ignored by the previous Attorney General, so that is why we think the appointment of Mr. Carpizo is a welcome decision, but it is still too early to tell whether it is having already a very serious effect.

The recent investigation into the murder of the Roman Catholic prelate of Guadalajara has also revealed the extent to which reform is sorely needed in the Federal Judicial Police. During the investigation, it was revealed that several judicial police agents assisted in the operation.

One allegedly collected the semiautomatic weapons used in the murder and others received bribes. The hit team left the scene aboard a commercial Aeromexico flight that was delayed 20 minutes for their boarding. It has been alleged that they boarded by showing FJP badges, and that they lacked boarding passes.

Chairman LAFALCE. They could have been detained at the point of destination, too.

Mr. MENDEZ. That is right, which they were.

Chairman LAFALCE. They were not.

Mr. MENDEZ. No; they weren't immediately.

Chairman LAFALCE. I mean they could have been.

Mr. MENDEZ. Right. We have particularly followed the issue of impunity that both of my predecessors in the panel have alluded to.

Chairman LAFALCE. So, the initial stories that he may have been shot by accident are now not given very much credibility at all, are they?



Mr. MENDEZ. Well, I think that there is still credibility for the issue that it was a case of mistaken identity. I think one needs to follow the case a little further, but it is still possible that the intended target of the attack was not the archbishop but another person, probably a high crime figure in a dispute over turf.

Chairman LAFALCE. Possible, but so many of the bullets were shot at close range. I understand within 4 feet he was shot many times. He had on his clerical garb. Aren't most people thinking that it would have been very difficult to have mistaken him for somebody else?

Mr. MENDEZ. Yes; but until we have more information on motivation, for example, it is hard to make the case that he was the intended target.

The important thing that we bring to this hearing is that the extraordinary complicity of high-ranking Federal Judicial Police was revealed, precisely like Mr. Livas says, because there was a scandal and it is still an important reaction.

Chairman LAFALCE. A lot of times this type of practice would be going on, but it wouldn't have been revealed because it wouldn't have been such a famous, well-known person.

Mr. MANZULLO. Would the Chairman yield for a question?

Chairman LAFALCE. Yes.

Mr. MANZULLO. Are you stating at this congressional hearing that the Government of Mexico had something to do with the assassination of the cardinal? Is that what you are saying?

Mr. MENDEZ. No; Mr. Manzullo.

Mr. MANZULLO. I realize that I am late. I am certain this doesn't come up all at once.

Mr. MENDEZ. What I said was that the Government's own investigation has revealed that members of the Federal Judicial Police were involved, apparently in their own capacity as participating, but that does not relieve the Government of responsibility for disciplining and cleaning up its own act.

Mr. MANZULLO. But it is doing exactly that, isn't that the case?

Mr. MENDEZ. It is beginning to do it. The point is that the case has received a lot of attention, and, like in other cases that are described in my testimony, the identity of perpetrators of serious human rights violations was known to the Federal Judicial Police, and they could have been apprehended before.

Mr. MANZULLO. But you are saying—the purpose of this hearing, as I understand it, and Mr. Chairman, I want to be on record for opposing using the Small Business Committee as a forum that really should be carried out in the Foreign Affairs Committee, of which I am a member, but the purpose of this hearing as I understand it is to state that the Government of Mexico is so corrupt and that it is such a perpetrator of human rights violations of this nature that we should not enter into an agreement with it, and that is why I asked you that question.

Chairman LAFALCE. Who said that?

Mr. MENDEZ. I certainly didn't, Mr. Chairman.

Mr. MANZULLO. This is in the Amnesty record. I understand the purpose of the hearing—

Chairman LAFALCE. I don't think that is in the Amnesty report, and I don't know who said that was the purpose of the hearings.



Mr. MANZULLO. Well Mr. Chairman, if we are talking about human rights violations in Mexico——

Chairman LAFALCE. Secretary Christopher said that human rights should be part of the consideration of any trade agreement you enter into with any country, even binational; he said this just 2 weeks ago.

Mr. MANZULLO. That is correct, but the issue here is whether or not this hearing is to be used as a forum to lay the blame for the assassination of the cardinal at the feet of the Mexican Government.

Chairman LAFALCE. No.

Mr. MANZULLO. No; it is not or this is an abstract philosophical discussion as to police protection in Mexico or is this in all——

Chairman LAFALCE. If the gentleman said that he was at quite a disadvantage for just having come in this 2 seconds ago, I agree with him, he is at considerable disadvantage for that.

Mr. Mendez was making some statements about the human rights conditions in Mexico because, as Secretary Christopher says, this is an important consideration involving any trade treaty you are going to enter into.

We are very concerned in this committee about trade as it affects the small business community and somebody must investigate this human rights issue. I do not believe it has been investigated adequately by either our administration, Democrat, or Republican, nor do I believe it has been adequately investigated by other committees, and, therefore, as part of the NAFTA considerations, I wanted to investigate this.

That is why we are having the hearing today. That is what we are doing. Now, Mr. Mendez was not asked to comment at all about the bishop or the cardinal. He mentioned it, and I asked him some questions.

The questions I asked brought out the fact that he doesn't know if it was deliberate or indeliberate that the cardinal was shot. There are those who believe it was deliberate. They are those that believe it wasn't deliberate. It is being investigated.

It does appear, according to him, quite clear that the Federal Judicial Police were involved in the killing. That seems to be beyond dispute. I think that is a fair statement, correct, Mr. Mendez?

Mr. MENDEZ. I think so. It was borne out by the Government's investigation.

Chairman LAFALCE. That the Government of Mexico, under their new Attorney General—virtually everyone at this table thinks he is an excellent person—is attempting to pursue this.

Mr. MANZULLO. So, therefore, because of the pursuit of the assassination of the cardinal, would it be your position that the country of Mexico is doing everything possible to investigate this atrocity? Would that be correct?

Mr. MENDEZ. I think the Mexican Government has done some credible investigation of this particular case. We still have to keep our minds open about how far reaching that investigation is going to be because it is too early to tell.

I also explain in my testimony that I have submitted for the record that in other cases some of those investigations have been

very important. They have happened only in the last few years but some of them have not been far-reaching enough.

The position of Americas Watch is that some things are being done by the Government of Mexico on human rights but that much more needs to be done, and I hope the record will show that because it was before Mr. Manzullo came into the hearing that I have found that Americas Watch does not take a position on the advisability of reaching a NAFTA agreement or not.

Chairman LAFALCE. It is in your written testimony. It was also in your oral testimony when you started and you have reiterated——

Mr. MANZULLO. Mr. Chairman, I would state that the mere fact that we are discussing Mexico's response to a criminal act at this hearing is innuendo that the Mexican Government is acting inappropriately and inefficiently with regard to this crime, and I don't think it is proper for this committee to be entertaining that type of testimony.

Chairman LAFALCE. The record notes your testimony. I note if I were a professor of logic, I would give you an F.

Please proceed.

Mr. MENDEZ. Thank you, Mr. Chairman. We have particularly followed the issue of impunity within the Federal Judicial Police. A study conducted toward the end of last year looked at the 8 or 9 cases in which the Government very deliberately acted against 8 Federal judicial police officers who were responsible for 14 instances of torture, 8 individual murders, 1 mass homicide, 2 disappearances, 14 cases of arbitrary and illegal detention, and a variety of lesser offenses.

Now, these are cases that the Government itself portrayed as very serious efforts to clamp down on human rights abuses.

As of this writing, only one of the eight has been sentenced. He is serving 4 years for mass homicide, and he becomes eligible for parole after completing 2 years and 5 months. One other is under investigation. Three of the commanders were dismissed on February 11, 1992. A criminal prosecution is believed to have been initiated in one case, and the whereabouts of two other commanders are unknown.

The Attorney General's Office did attempt to file charges against three of these officers sometimes on lesser offenses than murder, but the courts dismissed the indictment. In one notorious case, apparently with ample evidence, the courts twice refused to prosecute, citing insufficient evidence.

This suggests that efforts by Mr. Carpizo to fight corruption and impunity at the Attorney General's Office and at the Federal Judicial Police may not be enough. The last of the eight officers included in the study was arrested in 1992. He remains in custody but the status of his case is still unknown.

In a separate case, of March 1st of this year, a former Federal Judicial Police officer went on a rampage and killed five people. His name is Jesus Rioja Vazquez. Upon his arrest, it was revealed that he had been involved in several notorious cases of Federal Judicial Police abuses and he was then acting as a madrina, or a free-lance police agent, and under the protection of local police agents.

If a serious effort had been made in time, evidently the Federal police knew of the identity and whereabouts of Mr. Rioja Vazquez. The lack of action in his case meant that he went into that rampage, so these murders could have been prevented.

The Government has taken steps to combat abuses as you, Mr. Chairman, have pointed out in your opening statement. The most important of those steps has been the creation in June 1990 of the National Human Rights Commission.

The commission produces detailed reports of its activities to the public and cooperates with foreign, nongovernmental agencies that seek information. While the national commission now has constitutional stature, its powers have been curtailed by restricting its investigation only to Federal agencies, not to State agencies.

Most State governments have now created their own agencies modeled after CNDH, but their effectiveness in curbing abuse by State agencies is very much dependent on the whim of local authorities.

In spite of these limitations, the CNDH has produced an impressive body of investigation and legal analysis in the hundreds of cases brought to its attention. Its recommendations in the vast majority of those cases represent serious efforts to come to the truth about violations, and their regular publication is an important step in that direction. Our main qualm, however, is that this is a great step in the direction of truth telling but almost nothing in the direction of actual prosecution and punishment for those abuses.

The effectiveness of the CNDH is marred by the refusal of agencies to which the CNDH issues recommendations to act on those recommendations.

Americas Watch has followed the CNDH with great interest and is pleased to see the success of the agency in breaking the official silence that pervaded human rights violations before 1990. Even so, we have some criticism of the work of CNDH itself, and I would point out mostly the following:

One, CNDH only examines cases where torture is well documented and physical evidence of torture exists. It has refused to consider psychological torture to be torture.

Second, the CNDH never recommends compensation for victims. CNDH does not complain when persons accused of torture are charged with lesser crimes for example, abuse of authority, although that prevents the application of the Federal Law to Prevent and Punish Torture.

CNDH does complain about lack of compliance with its recommendations but in some cases it has not complained forcefully enough, and it accepts partial compliance as a demonstration of good faith when often it is a tactic to get the CNDH off the back of the agency that must implement the recommendation.

From the beginning, CNDH insisted upon a mandate that did not include labor or election-related abuses, something we disagree with. We think labor rights and the right to political participation should very squarely lie within the mandate of CNDH. Yet, CNDH has gone further and on its own initiative has crystallized those limitations in the new constitution.

CNDH also backed the creation of State human rights commissions. We disagree with that because it does not allow CNDH to



look at violations committed by State authorities, and it also has led to the creation of a human rights bureaucracy that is so vast that it is very difficult to keep track of it.

In two cases that I mentioned in my written testimony, we also take issue with equivocal recommendations on politically sensitive cases. For reasons of brevity, I will just refer to my written record.

Finally, we have a very serious qualm with recent actions by the CNDH in improperly attacking independent human rights monitors. For example, Victor Clark Alfaro, who is the director of the Binational Center of Human Rights in Tijuana was publicly denounced by CNDH on the ground that he did not provide them with sources about juveniles who had been tortured.

The Centro de Derechos Humanos Fray Bartolome de las Casas, a church-sponsored, human rights organization in Chiapas, was accused by CNDH of interfering with a police investigation.

This is particularly unfortunate because the work of human rights monitors is very difficult in many parts of Mexico. Just last week, Mr. Clark was a victim of an attempt to silence his work through manipulation of the legal procedures. He has been accused of slander and defamation, and the judge has allowed those charges to go forward on the basis of a report on torture and corruption in the State of Baja California that he has just published.

We believe that accusations of slander, especially when pressed by a powerful public official like in this case, have a chilling effect on the exercise of freedom of expression and are inconsistent with the notion of an open society.

I point out here that the State of Baja California is now governed by an opposition party, not by the PRI. Nonetheless, we call on the State of Baja California to allow freedom of expression and particularly the work of human rights groups; but we also urge President Salinas to consider free expression and human rights monitoring to be a matter of Federal concern and to provide unequivocal support to Mr. Clark's right to monitor and publish his findings without fear of retribution.

With respect to the Centro Fray Bartolome de las Casas, my colleague, Eric Rosenthal, is going to describe this very serious case of rural violence that the Centro has tried to monitor. Because of that, the Centro has been subjected to very serious threats in Chiapas.

The judicial protection of human rights in Mexico has been very seriously lacking. As I said before, the courts are not particularly hospitable terrain for citizens to bring human rights complaints. Writs of *amparo*, similar to the American *mandamus*, that can be submitted on behalf of the detainees in order to examine the conditions of detention are frequently ignored.

In January 1992, Mexico passed a new Federal law to prevent and punish torture. Basically, it makes a confession rendered before a police authority or before the prosecutors or a judicial authority to have no probative value unless in the presence of a defense attorney or a person of trust.

We think that this is a step in the right direction, but we have called for more, and we don't think this is enough. CNDH believes that it has already had an effect in diminishing the incidence of

torture, but Mexican human rights attorneys and monitors take issue with that.

Americas Watch believes that the new Mexican law does not go far enough. We have repeatedly urged the Mexican authorities to enact legislation making all confessions inadmissible for any purpose unless rendered before a judge in a formal hearing and under the assistance of counsel of the defendant's own choosing.

The fight against corruption especially in the Federal——

Mr. MANZULLO. Could I ask a question?

Mr. MENDEZ. Sure.

Mr. MANZULLO. You are asking the Mexican Government to pass a law to render all confessions to criminal acts inadmissible, is that what you just stated?

Mr. MENDEZ. No; all confessions unless rendered freely by a defendant before a judge in a court of law in an open hearing and after assistance of counsel. We think that is the status of international law on the matter right now. We don't think Mexican law is up to that standard.

Mr. MANZULLO. You are familiar with the law in the United States.

Mr. MENDEZ. Yes; I am.

Mr. MANZULLO. You are saying that the law is that the confession should be given in court after assistance of counsel. I am trying to find out what you were saying in terms of admissibility of a confession. Could you state it again?

Mr. MENDEZ. Well,——

Mr. MANZULLO. Let me restate the question——

Mr. MENDEZ. You can take confessions out of court. I am not saying you can't. What I am saying is that an effective way of preventing torture in countries where it is regularly practiced, like in Mexico, would be to render confessions completely inadmissible, unless they were freely given to a judge in a court of law and after assistance of counsel.

Mr. MANZULLO. So, the only confessions that you would allow in criminal enforcement would be confessions given in open court.

Mr. MENDEZ. Yes.

Mr. MANZULLO. That is correct.

Mr. MENDEZ. Yes.

Mr. MANZULLO. That would make 85 to 90 percent of crimes unable to be solved. I practiced criminal law for 22 years in the United States, and 85 to 90 percent of defendants give confessions. That is how crimes are solved because of the inability to gather evidence without a critical confession of the defendant. Based upon what you were saying takes effect, that will render hapless criminal investigations and make crime run rampant in Mexico.

Mr. MENDEZ. I don't think that is the case. I think, in fact, the laws in this country like Miranda and Mapp versus Ohio and Wolf earlier on, have made police much more effective and have not rendered the police ineffective.

Mr. MANZULLO. That is correct. It has not gone to the extent of saying that a person has to have counsel with him, and it has to be given in open court before a judge.

Mr. MENDEZ. That is true. That is a position that we take in countries where there is a very widespread practice of torture.

Mr. MANZULLO. That would also——

Mr. MENDEZ. We are not saying that is the law of the United States. We are saying that is the trend in international law, and it is a very salutary trend toward eliminating the widespread practice of torture.

Mr. MANZULLO. If that were the case in this country, 85 to 90 percent of the crimes would not be solved. This country has come a long way in civil rights and human rights abuses by way of coerced confessions. That is why we had Miranda. That is why we have the exclusionary rule in the Fourth Amendment cases.

But it is a matter of a country that is emerging, and democratic and human rights values will evolve into a situation where the reins are tightened in terms of admissibility of confessions.

Thank you for your explanation.

Mr. MENDEZ. OK.

Chairman LAFALCE. You are only making that recommendation in countries that practice torture endemically as a matter of common practice?

Mr. MENDEZ. That is right.

Chairman LAFALCE. Please continue. Actually you are going to have to sum up. We have two witnesses and another subcommittee that is supposed to have a hearing at 2 o'clock.

We will get them to delay it somewhat but not much.

Mr. MENDEZ. I will then go to only a couple of more instances. I refer you to the rest of my comments that are submitted for the record.

We are particularly concerned at the question of election observations and persecution of opposition activists. As Mr. Livas has pointed out, election observation, both by domestic and by international observers, is an important matter because the authorities and mechanisms entrusted with insuring the fairness and freedom of elections have been woefully inadequate.

The Inter-American Commission on Human Rights has found in the only cases in its history against Mexico that the adjudication of election-related complaints in two States fell short of Mexico's obligation under article 23 of the American Convention to provide for political participation through regular authentic elections.

Since then, Mexico has embarked on far-reaching electoral reforms, but it is as a result of that reform and of international attention that independent groups in Mexico have begun to monitor elections.

There has been more recently some international electoral observers as well. The official position of the Mexican Government is that it allows domestic Mexican efforts as well as visitation by international observers at election time, but it does not recognize their legitimacy to pronounce on freedom or fairness of elections.

We are also concerned that there has been reports of a draft that the PRI is preparing, that is not quite a bill in Congress yet, that would legislate electoral reform generally, and although it includes several good principles, it includes so far some troubling concerns.

For example, it would prohibit international observers period, and, although it would allow domestic observers, it would create sanctions for those nongovernmental observers who publicly dis-



agree or challenge the decisions on announcements of regular electoral authorities.

We believe that electoral observation is part and parcel of the creation of a strong and vibrant civil society, and that it goes hand in hand with freedom of speech and freedom of association.

Therefore, the Government of Mexico has a duty to allow for very open electoral observation efforts. We hope that these ideas that the PRI is at this point considering will not become law.

I have more to say, but in the interests of time, I thank you very much, Mr. Chairman.

[Mr. Mendez' statement may be found in the appendix.]

Chairman LAFALCE. Thank you Mr. Mendez.

Our next witness is Mr. Juan Manuel Arrigunaga Juanes. Please proceed.

**TESTIMONY OF JUAN MANUEL ARRIGUNAGA, DEPUTY DIRECTOR, FAMILIES CIVIC COALITION, [FRENTE CIVICO FAMILIAR]**

Mr. ARRIGUNAGA. Thank you, Mr. Chairman.

Well, I belong to our Frente Civico Familiar founded 5 years ago. We work for democracy and human rights. We don't want to be sitting, just complaining for the Government abuses.

Since 1988, we have observed three different elections in the State of Yucatan. In 1988, the Federal election. In 1990, local election for mayors and the local Congress representatives. In 1991, Federal elections in Yucatan. In 1988, they were for president, senators, and representatives of the Congress. In 1991, only for senators and representatives.

We are against the antidemocratic laws like the CEDEY which is the electoral law in Yucatan. We are fighting against other human rights violations. Last week, we came to the Organization of American States to formally file a petition against the Mexican Government before the Inter-American Commission of Human Rights for the restrictions of the citizens' political rights in the CEDEY which is the electoral law of Yucatan.

I have some examples of the law here, but they are in Spanish, and the petition. The law, this law, leaves the total control of the elections on the Government's hands. They control the Padron Electoral, the list of voters. There is no open access to verify the information there.

They actually make the ID cards, the identity cards needed to vote. They have the majority in all the electoral councils: The State council, the district council, and municipal council. These councils organize, control, and watch over the process. At the end, they determine temporarily who wins.

They nominate the members of the electoral court. There is actually an electoral court whose responsibility is to resolve on irregularities in the electoral process. Anyway, their resolutions are not definitive. Resolutions can be disregarded or modified by the Colegio Electoral. That is formed by the candidates' presumed winners. So, the new congressmen, not yet congressmen but the presumed congressmen, the future congressmen, they make the final decisions on the elections, even their own election.



The citizens don't have any legal defense in the event of a fraud. In the first place, because the electoral court is useless for the reasons given above, the resolutions are not definitive, and they are nominated by the Government.

Second, the National Commission of Human Rights does not mediate in political rights violations under the 102 article of the Mexican Constitution. The national Congress is totally controlled by the official party's majority.

Our civil and judicial laws don't include penalties for political rights violations, because the law doesn't consider political rights as human rights. Under these conditions, it is easy for the Government to manipulate the elections to its convenience and that has happened. I am going to testify about the things I have seen myself and my mates at the Civic Front.

Some of the irregularities we have seen are—we have put names for them. The crazy mouse. They change the places where the people are to vote so the people don't know where to go to vote the same day of the election. I found that. I was in charge of four different places for vote centers, and one of those was changed, so I had to look for it. At the end, I finally found it.

Another is called something like razor and inflation. They take people out of the list of voters, normally members of the opposition parties, and put other invented names to be used by their people.

Tacos. They give their supporters a roll of votes, all marked for the PRI and voters put them into the ballot boxes.

We found this once when the people in charge of the voting place decided to sign all the sheets for the voters going to be put in. At the end, they found 40 sheets with no sign at all. So, somebody put them and brought them from we don't know where. All unsigned. All for the PRI.

Carousel. They gather 20 to 30 people in trucks and take them to vote in many places. We have followed those trucks even for 30 or 40 miles to go to a little town so the people go there and vote and their names are put in the list of voters.

The ballot boxes robbery. They gather groups of 20 to 30 youngsters who actually steal the boxes. I was hit by them once when I was counting the votes, and they came and there were old ladies and myself, so I step in front of them and say please be calm, be calm. I tried to calm them down. Well, I got hit. All that was in the press, with photographs and everything. All right.

Changing the results. If, in spite of all these "tricks," they lose anyway, they simply change the results in the final certificate on tally sheets.

We have noticed that in places where the opposition couldn't have a representative, the percentage of voters increases and all for the official party. I brought some statistics here to prove this. At the 1990 election, there were 766 places for voting and 475 of them were covered by the opposition parties. They had representatives there. In those places, 40 percent of the listed people voted, and at the other, 291 places where the opposition party didn't have a representative, 90 percent of the list voted. Of course, all for the PRI.

I have some of the samples here of the 106 municipalities and counties in Yucatan. This one. Hecelchakan, a 100 and point 52 people of the list voted.

Mr. LIVAS. Percent.

Mr. ARRIGUNAGA. Percent.

Chairman LaFALCE. That is pretty good.

Mr. ARRIGUNAGA. In another town, 100.36 percent of the people voted. There is——

Mr. MANZULLO. How many?

Mr. ARRIGUNAGA. In another town 111 percent of the people listed voted.

Mr. MANZULLO. How can you have over 100 percent of the people voting?

Mr. ARRIGUNAGA. It is simply incredible, no? The law allows 10 percent extra voters for people who are tourists, traveling, or things like that.

Mr. MANZULLO. We have that in some States. It is called motor-voter.

Mr. ARRIGUNAGA. Well, but that happened only in the places where the opposition party didn't have a representative.

Mr. MANZULLO. Do you have representatives? Doesn't every party have the right to have a representative here?

Mr. ARRIGUNAGA. Only in the city of Merida.

Mr. MANZULLO. We call them policy watchers.

Mr. ARRIGUNAGA. We were observers.

Mr. MANZULLO. Observers. But you are not allowed to have observers at every voting area?

Mr. ARRIGUNAGA. Well, we found a way to do that. We ask the opposition parties that don't have many people, and we can help. They name us as representatives of theirs, and we will be there, and that is the way we work. So, the witnesses watch everything that is happening. Very close. Because if we were only observing, they won't let us get in the place where the people are voting.

Mr. MANZULLO. Do you have an internal system of resolving these types of disputes within Mexico, court system, or what have you done internally?

Mr. ARRIGUNAGA. Well——

Mr. MANZULLO. I know you are frustrated. That is why you filed this with the OAS. But what steps did you take before you filed it with the OAS?

Mr. ARRIGUNAGA. As I said before, there are no steps possible in Mexico. Many laws don't allow anything to do, but we have gone to the Congress, and they simply don't hear us. They don't hear us.

Mr. MANZULLO. There are no laws that allow you to contest the election.

Mr. ARRIGUNAGA. Not even the Commission of National Human Rights. Not anywhere. There is no defense for the people. The law is like that. I brought a sample of law, but it is in Spanish. But you can have it if you want it. All right.

Mr. MANZULLO. I would like to see, if possible, an English translation of that, if one is available.

Mr. ARRIGUNAGA. Well——

Mr. MANZULLO. Don't translate it just for me, but just for my reference would like to see the election code that does not provide for any system of redress for a tainted election.

Mr. ARRIGUNAGA. I would have to read almost the whole law——

Mr. MANZULLO. I am not talking about now. I am saying, if there is an English translation, you could send it to me for my records. I would appreciate it.

Chairman LAFALCE. I am going to have to interrupt. We are going to have to try to conclude as soon as we can because Mr. Sarpalius, the chairman of the Subcommittee on Rural Enterprises, has called a hearing for 2 o'clock.

But I do want to hear your concluding remarks, and I do want to hear, Mr. Rosenthal, your brief summary of the remarks. We would have loved to have heard at greater length were it not for the interruption of the seven votes between 11 and 12:30.

Mr. ARRIGUNAGA. There is only one little thing I want to testify. In November 1993, this year, we are to elect our next governor. In April, the Congress of Yucatan—18 out of 25 members are from the PRI's—signed a decree to establish that the next governor would last for only 18 months, instead of 6 years, because it is important, that is what they said, that the governor be elected after the election of the President in 1994.

The Congress would nominate the governor for this period, and this decree broke the Mexican Constitution because we have to vote for governor.

The opposition parties, the civilian organizations, business organizations, and citizens reacted immediately. The Mayor of Merida, who is from the PAN, convoked the people to a referendum. We were invited to be witnesses of the process—The Civic Front—and 43,000 people voted, responded, and more than 96 percent of them rejected the decree.

The Government went back a little, and the Congress signed a new decree to establish that the people will elect the 18 months governor.

It seems that the intention of all this was to eliminate the PAN's best candidate, Ana Rosa Payan, Mayor of Merida, for the next election or, if she decides to run for it, to shorten her period as governor.

Apparently, the decisions for all this were made in Mexico City under the responsibility of the President.

We are very concerned. So, this is a sample of the presidentialism that Mr. Livas was talking about. The people, the PRI people in Yucatan didn't want this because their image would be dirty. We are very concerned about the importance that Mexican Government has given to the economic issues in detriment of political matters.

We are convinced that there can't be real social progress without a democratic system. Presently, we work for democracy. We want a change in that subject, but peaceful change, and the situation right now is growing dangerously to a point where violence can appear. I don't think military, but the people will react. We cannot accept every time the elections happen, our human rights being violated, our political rights being violated.

That is it. Thank you.

[Mr. Arrigunaga's statement may be found in the appendix.]

Chairman LAFALCE. I thank you very, very much.

Our next witness is Mr. Eric Rosenthal for the Minnesota Advocates for Human Rights.



Mr. Rosenthal, again I will have to ask you, because the subcommittee is waiting, to be especially brief.

### TESTIMONY OF ERIC ROSENTHAL, MINNESOTA ADVOCATES FOR HUMAN RIGHTS

Mr. ROSENTHAL. Thank you, Mr. Chairman.

I appreciate this opportunity to testify on human rights in Mexico and the important relationship between human rights and NAFTA. I will summarize my testimony and keep it brief.

In December 1992, Minnesota Advocates came out with a report, "No Double Standards in International Law," summarizing the evidence on record of the human rights situation in Mexico and calling for a linkage between NAFTA and the establishment of international human rights enforcement mechanisms.

I need not go into the details of that report because of the excellent summary that we have heard of the human rights situation in Mexico. The report goes into detail about the linkage, and we appreciate the opportunity to raise public consciousness about the human rights situation in Mexico. Our report concludes that the laws of Mexico, certainly in the human rights area, are not being enforced and that de jure protections alone are not enough. A human rights enforcement mechanism is needed, if we want to protect our interests under NAFTA, including supplemental agreements such as labor and environment. We simply cannot count on the enforcement of those provisions unless fundamental human rights protections are insured. In our "No Double Standards" report we have outlined a mechanism that would provide enforcement for international human rights law. That mechanism exists through the OAS, through the inter-American system of human rights protection.

A number of our speakers today have spoken about complaints they have made to the Inter-American Commission. I would like to point out, however, that the Inter-American Commission has no enforcement powers until Mexico accepts the jurisdiction of the Inter-American Court. Mexico has ratified the American Convention, and that is an important first step. But until Mexico accepts the jurisdiction of the Inter-American Court, the Inter-American Commission's decisions are not enforceable.

The United States, which has still has not ratified the American Convention, could lead the way by ratifying the convention and by accepting jurisdiction of the Inter-American Court as well.

We appreciate very much that Secretary of State Christopher has stated that he will press for ratification and that Senator Wellstone has circulated our report, with favorable recommendation, to his colleagues in the Senate. In addition, I have just learned that last week, Mr. Chairman, you sent a letter to President Clinton, along with some of your colleagues, calling for ratification of the American Convention.

We appreciate that effort, and we hope that this process can lead to an agreement by the United States to link our trade policy with the creation of effective enforcement mechanisms for human rights.

What I would like to talk about today are some very important and disturbing developments in the southern state of Chiapas, which have been detailed extensively in my written testimony. The

full report, documenting abuses by the Mexican Police and Military in the Mexican countryside will be coming out within a week or two. It is entitled "Civilians at Risk."

It has now been well-documented that in Mexico the police engage in torture with impunity. What has been previously undocumented is the role of the military, particularly in the more remote areas of Mexico.

"Civilians at Risk" shows that the military, which under the Mexican Constitution, is clearly prohibited from engaging in law enforcement activities, detaining civilians, and searching houses under any circumstances, has increasingly been allowed to engage in these activities without reprimand by the Mexican Government.

While there has been a great deal of attention paid to the events of May 24 when the cardinal was assassinated in Guadalajara, there has been very little coverage of these recent abuses. On the same day, May 24, 1,000 soldiers moved on the villages of Pataté Viejo and Pataté Nuevo in the southern part of Chiapas.

I happened to be in the area at the time. We had gone down to document abuses in the area of San Isidro and Mitzitón in which a month earlier the military and police had detained the entire village of San Isidro. Some individuals were taken by the police after that event and tortured. A man by the name of Rafael Heredia López was placed in a tire, had a block of wood put in his mouth, a cloth put over his head, and water was poured over his head to create a drowning effect. Other incidents of torture by the police also took place in that circumstance. We were in Chiapas to document those incidents when we learned that in another part of the State, the military had just moved on some more villages.

We traveled across the State to Pataté Nuevo, about 2 hours from the town of Ocosingo, and arrived late on May 25, the day after these incidents occurred. We found that the town, with a population of about 200 or 300 people, was close to deserted. In front of the church at the far end of the town there was a military truck that sped off when we arrived.

We entered the church and found 40 or 50 women and children packed inside. There was great fear on their faces. They said they would not leave the church as long as the military was still in the area. Most of the town had fled the village, they said. They said that about 1,000 soldiers had entered the village on May 24, detained the entire village on the basketball court for a few hours, conducted house-to-house searches, and arrested eight residents from houses in which they found 22-caliber rifles. We were told that these weapons are legal under Mexican law.

According to the villagers, the soldiers took the eight men from the basketball court and left. They told the people in the town that the eight men were going to be removed for about 15 minutes for questioning. When we arrived, 36 hours later, the wife of one detainee told us she had no idea where her husband was. None of the other villagers seemed to know either, but they told us the soldiers were up on the hill.

We went up the hill to investigate, whereupon we encountered the soldiers in an encampment, a PEMEX oil drilling facility they had taken over. We counted 22 personnel carriers, a number of other large trucks, and hundreds of soldiers. We asked to see Gen-

eral Menchaca, the general in that area, and we were waved into the camp.

In the camp we were met by General Godínez, a three-star general, one of the highest generals in Mexico, who was there with the other generals. He confirmed that the military had indeed detained the individuals in this town.

His story at that time was that the detainees were turned over to the Federal authorities on charges of possessing illegal weapons. We were very disturbed to hear a few days later that the military had come up with a new story and that the new story was that the soldiers had been fired on by people in the area. Now the detainees were being charged with homicide.

Mr. Chairman, we question the legality of the original action, but the original explanation is more factually credible. Those arrested were reportedly picked off a basketball court, which contradicts the later story that they were arrested after firing on the soldiers.

On May 31, the Secretary of Defense claimed that there was guerrilla activity in the area, and now the military reports that the eight detainees are being charged with treason. This is one of the most serious crimes under Mexican law. In fact, the Mexican Constitution prohibits the death penalty for almost all crimes, but allows it for treason. We are very, very concerned, because the new story, it looks like a post-hoc explanation for what was going on.

As I explained earlier, the Constitution of Mexico prohibits the military from engaging in any of these activities which it reportedly performed in Pataté Nuevo. Soldiers do not have the authority under any circumstances to detain an entire village and conduct this kind of house-to-house search. They may not arrest civilians unless soldiers are, in fact, fired upon, or they run across a violation of the law "in flagrante." Soldiers may only arrest civilians if immediate action must be taken to prevent the crime from happening. The military's later explanation might explain why the military would be conducting these otherwise illegal activities.

We are very concerned about this case. We have documented the fact that the military has been acting completely outside the bounds of Mexican law. Our study, which we will be releasing within the next week, looks at a series of three events—abuses by the military in Chihuahua in November 1992, in San Isidro and Mitzitón in March and April 1993, and in the region of Ocosingo at the end of the month.

We are disturbed to find that so far there have been no reprimands whatever against the military for any of the recent activities in Chiapas.

[Mr. Rosenthal's statement may be found in the appendix.]

Chairman LAFALCE. What has been the position of the U.S. Government on all this?

Mr. ROSENTHAL. The recent events have received extremely little publicity in part because of the attention paid to the killing of the cardinal. What the United States could do to show its concern would be to say that we will be linking our trade policy with the enforcement of Mexico's own Constitution and of international human rights norms that have been violated here in the United States.

Chairman LAFALCE. I don't want to go into that.



Gentlemen, I hate to do this. I would like to go on at much greater length, but, unfortunately, we had scheduled the room between 11 o'clock and 2 o'clock thinking that would be more than ample time.

The intervening votes obviously proved that wrong, but Mr. Sarpalius, subcommittee chairman, has his witnesses here. He called them a long time in advance, and he was entitled to this room as of 2 o'clock. I have already infringed upon his time, for which I apologize, but hope he understands.

Chairman LAFALCE. I want to again thank the Members and the witnesses, and I look forward to working with you in the future.

Thank you very much.

[Whereupon, at 2:21 p.m., the committee was adjourned, subject to the call of the Chair.]



## HUMAN RIGHTS AND NAFTA: FRONT-LINE PROSPECTIVES

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THURSDAY, SEPTEMBER 30, 1993

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10 a.m., in room 2359-A, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the committee) presiding.

Chairman LAFALCE. The Small Business Committee will come to order.

Our committee is convening this morning to continue its examination of the human rights situation in Mexico and its implications for the conditions that U.S. business can expect to encounter if NAFTA is approved.

There are those who contend that NAFTA is a trade agreement and has nothing to do with human rights. I strongly disagree. I believe the United States, as the world's leading proponent of democracy and the protection of individual rights, has a moral responsibility to clearly articulate the basic conditions which must be obtained in countries with whom we, if anything, enter into a free trade agreement. Indeed, this mirrors the opinion expressed by Secretary of State Warren Christopher when he reaffirmed in Vienna this year that human rights must be a key consideration of United States trade policy.

This is not an abstract concern. U.S. citizens—and U.S. businesses—will be directly affected by the human rights environment in Mexico as they do business or attempt to do business.

What this committee has learned of that environment to date is deeply troubling. On February 25th and June 29th of this year, our committee heard compelling testimony from American and Mexican witnesses describing egregious violations of labor, political, judicial, and human rights that appear to be a common occurrence in Mexico.

We have heard about the imprisonment—and sometimes, death—of Mexican workers who seek to organize and strike for better pay and working conditions. We have heard about teachers and ordinary citizens in Yucatan working to monitor election polls—and being told the polls had moved. We have heard about a judicial system that truly does not function as our own does, that does not provide an even-handed, safe haven for the accused, and does not promise the fair adjudication of disputes. We have heard that the United Nations Committee against Torture rejected in November



1992 the Mexican Government's report on human rights, finding "a distressing disjunction between legal reforms and actual practice."

It is this environment that U.S. business will confront under NAFTA. Evidence suggests that the business community is already feeling its impact.

This very week a front page story in The Wall Street Journal described the ordeal of a resort developer from Arizona who spent 16 months in a Mexican jail suffering through "a bizarre nightmare." Eventually charges were dropped after the developer signed an agreement to change the terms of a bank loan.

In another well-publicized case, an American exporter from Salt Lake City found himself being chased over dusty roads by Federal Judicial Police brandishing submachine guns in a race to the U.S. border. The police were after the original accounts and photographs from a \$4 million deal in which the exporter's Mexican customers wrote their contract.

American companies operating in Mexico are discovering that formal joint venture agreements between themselves and their Mexican partners can be subject to unilateral abrogation by well-connected local parties. Obtaining relief in such situations is a slow, expensive, frustrating, and uncertain process.

There have been other troubling reports, not specifically involving U.S. companies, but certainly no less significant. Witnesses before this committee have reported the deaths in Mexican jails of a Peace Corps staffer from Washington, DC, and a Californian found hanging by his sweater.

I received a letter from a father in Texas whose 23-year-old asthmatic daughter was arrested with friends and spent 9½ months in an open cell block exposed to weather and insects, and denied medication on which she depended. Within 2 hours of release from jail, his daughter suffered an asthma attack and died.

In my own backyard, as I have reported previously, a Catholic relief worker from Buffalo working in Chiapas was stalked and shot 10 times—and lived to report the crime. Despite congressional letters to President Salinas, the case has not been resolved.

At the committee's June 29th hearing, Minnesota Advocates for Human Rights reported the results of its investigation in Chiapas, in a study that was later published entitled, "Civilians at Risk: Military and Police Abuses in the Mexican Countryside." These documented instances of military abuse of civilians, arbitrary detention, beatings, and torture have no place in a democratic society that is supposed to operate under the rule of law. Yet efforts to focus attention on and address human rights problems have subjected those involved to serious risk.

At the previous hearing, America's Watch testified that the courageous actions of the Center for Human Rights in Chiapas in its efforts to monitor human rights incidents have subjected the center "to very serious threats in Chiapas."

Conditions such as these are not only legitimate considerations the U.S. must take into account in making a determination on NAFTA, but central ones.

We are therefore pleased to welcome this morning two expert witnesses whose responsibilities relate directly to these key human rights issues. First we will hear from Ms. Nancy Ely-Raphel, the

Principal Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs. For years it has been the State Department's job to prepare an annual human rights report on conditions globally. We are pleased to have this opportunity to get the Department's perspective on these important issues.

After that, we will hear from Father Pablo Romo Cedano, executive secretary of the Center for Human Rights in Chiapas. I might add that Father Romo is in Washington to receive, along with Bishop Samuel Ruiz Garcia, on behalf of the center, the Letelier-Moffitt Human Rights Award.

Father, we congratulate you and Bishop Ruiz, and are delighted to have you with us this morning.

Before we begin with our witness from the State Department, I call upon our Ranking Minority Member, Mrs. Meyers, for any statement she might wish to make.

[Chairman LaFalce's statement may be found in the appendix.]

Mrs. MEYERS. Mr. Chairman, the topic of today's hearing is again human rights in Mexico. As I have said before, this is an important issue which we are all concerned about. I am looking forward to today's hearing, and I thank the Chairman for having a witness today from our State Department. I hope that both of today's witnesses will share with us not only stories of human rights shortcomings but stories of human rights successes in Mexico.

I might mention, Mr. Chairman, I am one of the chairs of a working group on human rights that attempts to monitor with America's Watch and Human Rights Watch the human rights for women, human rights abuses that are gender based in the world internationally. Then we write letters on behalf of individual women and try to generally monitor human rights abuses in other countries.

As all of you know, early this year President Salinas appointed Jorge Carpizo as Mexico's Attorney General. Mr. Carpizo, a distinguished jurist and scholar, had done an excellent job as president of Mexico's National Commission on Human Rights. I applaud President Salinas for this bold move and strong statement of the importance of improving human rights in Mexico.

Quite frankly, the naming of a man such as Mr. Carpizo as Attorney General is unprecedented in just about any country. In fact, an analogous situation might be if President Clinton were to name Ralph Nader as our Secretary of Commerce, something I think that is highly unlikely.

I do hope before the actual floor debate on NAFTA later this year, this committee can spend some time and have at least one hearing where we hear from American small businesses on their experiences in commerce in Mexico, both good and bad.

Both the majority and minority of this committee have talented staffs that I am sure could find a number of small firms out there that could talk with us about what it is like for American business men and women to conduct business in Mexico.

I thank the witnesses for coming today and I look forward to their testimony.

[Mr. Meyers' statement may be found in the appendix.]

Chairman LAFALCE. Any other Members have statements they wish to make?

Mr. Klink?

Mr. KLINK. Again, I would like to thank the Chairman of the Small Business Committee for continuing his inquiries into the North American Free Trade Agreement.

Like many on this committee, I have come out in opposition to NAFTA. In hearings in this committee and the Banking, Finance and Urban Affairs Committee of which I am also a member, I have listened to the dire consequences that will ensue should this agreement pass Congress. I don't believe we can let it happen.

Mr. Chairman, I have prepared a document that lays out the reasons for my opposition to NAFTA. At this point, I would like to submit that document for the record.

Chairman LAFALCE. Without objection, so ordered.

[Mr. Klink's statement may be found in the appendix.]

Mr. KLINK. I am grateful this committee is addressing the issues of human rights violations in Mexico. This is an issue that the ill-conceived NAFTA agreement does not address in any way. First mention of this concern was brought up in this committee in February. In that hearing we heard testimony that "Mexico is an authoritarian country where men, rather than written laws, govern both civil and commercial life." We have to ask ourselves if this is the type of justice that would benefit our businesses in America.

The Mexican Action Network on Free Trade, RMALC, is a coalition comprised of more than 100 social organizations, including human rights groups. RMALC has come to the conclusion that NAFTA neither responds to the Mexican people's need for development nor helps to solve the serious social problems of that region.

RMALC is also concerned about the fact that these NAFTA negotiations have led directly to amendments to the Mexican constitution. NAFTA also led to budget cuts in Mexico for programs dealing with employment creation, wage increases, health care, education, culture, housing, and ecology.

The PRI rules Mexico through election fraud, through corruption, and brutal human rights violations. NAFTA will further entrench the power of that party, I believe.

The issue of human rights being violated is only one of many as to why this NAFTA agreement should not pass. Too much is at stake for America and Mexico to enter into an agreement not beneficial to all.

I will add to my written statement that I believe that anything that occurs before NAFTA would be approved is the absolute minimum that we will see in changes in political freedom and social freedom for the people of Mexico.

I look forward to the hearing and to the testimony of the witnesses on the implications of NAFTA in regard to human rights violations in Mexico. I thank you all for being here.

Chairman LAFALCE. Thank you very much.

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman. I look forward to the testimony as well of the witnesses.

I think we would be amiss not to acknowledge the fact that President Salinas' commitment to improving labor and human rights standards, stabilizing the Mexican economy and easing political barriers is well-known, and he is working toward that. I think



it is a mistake to categorize Mexico as one big crime, if you look right here in Washington, DC, where we have a crime a day. We have got problems in our own country that need addressing as well. If I were in Mexico, I don't know if I would do a treaty with the United States or not, because it is kind of tough on business here.

While I think there ought to be improvement in our human rights, I think that we have an immediate problem of coexistence with the neighbors to our south, and by improving our treaty and trade relations—and the whole concept of NAFTA, of course, is to increase trade with Mexico, not necessarily to change their way of Government or to impose our way of life on them. While I think these hearings are beneficial, we need to look in our own backyard, at the crime we have here, and look at what our businesses are going to do in Mexico and whether or not it is safe for them to operate down there.

With that, I think that we have to assume that the coexistence of our Nation's free enterprise and open democracy won't necessarily apply in every country. We have got to balance that with the success of our Nation in the area of jobs, growth, productivity, and quality of life, and I think with NAFTA there is a start toward improving the life of the people in Mexico as well as in this country.

Thank you, Mr. Chairman. I look forward to the testimony.

[Mr. Johnson's statement may be found in the appendix.]

Chairman LAFALCE. Thank you.

Any other Members? Ms. Velazquez?

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Let me start out by commending you for calling this hearing on the human rights situation in Mexico and the probable repercussions of the proposed North American Free Trade Agreement on Mexico's political, judicial and labor conditions. The issues we will discuss here today are of crucial importance to a full understanding of the effects that NAFTA will have on both the United States and our neighbor to the south.

As I have stated many times in the past, I strongly oppose the proposed agreement. I find the argument of economic growth so often made by NAFTA proponents to be a mere front for the fact that the only sector that truly stands to benefit from NAFTA is big business. Through its victimization of workers, the loss of thousands of jobs here in the United States for the sake of corporate profits seem an all-too-unjustifiable prospect.

Furthermore, my trip with the women's congressional delegation to the Mexican border earlier this year gave me the eye-opening insight into the world of the Maquiladora worker, a world where American-owned factories exploit our Mexican brothers and sisters, forcing them to live in what could only be referred as subhuman conditions: Cardboard houses, no running water, and no electricity.

While in Mexico we had the chance to meet with a group of 75 academicians and human rights advocates who recounted the horror stories about the violations of human rights in Mexico, torture, and indifference from the Government itself. They also told us about the 96 human rights commissions that exists throughout Mexico, a fact that exemplifies the severity of the problem.

It is our duty as legislators to assure that American people are made aware of the victimization of workers in Mexico by the Government and by American corporations, that these violations don't go unpunished, that most importantly that they not be allowed to continue.

NAFTA will not only provide an incentive to American firms to leave thousands jobless in this country. It will also perpetuate the current conditions of Mexican Maquiladora workers.

Mr. Chairman, I thank you for this opportunity and I look forward to what I am sure will be highly enlightening testimony from today's witnesses.

Chairman LAFALCE. Thank you, Congresswoman Velazquez, for that excellent testimony.

Any other statements? Mr. Zeliff?

Mr. ZELIFF. Thank you, Mr. Chairman. Thank you for calling the committee together today to talk about NAFTA. We will be focusing on NAFTA and how it will affect the human rights situation in Mexico. I am looking forward to hearing the testimony today.

Clearly one of the most effective ways to improve basic human rights in any country is to assist that country to develop and prosper. NAFTA will create the world's largest trading block and will benefit the economies of all three countries.

What does economic development mean for Mexico? It means more resources to devote to environmental concerns and the enforcement of labor and human rights standards. Economic development also means less of an incentive for Mexicans to cross our border, illegally, to seek a better way of life. In short, it means a better standard of living for the Mexican people.

Opponents of NAFTA will dispute these points, but I will tell you one fact that is certain. Without NAFTA, whatever problems that exist now in Mexico will continue.

A more prosperous Mexico means more Mexican consumers with income to purchase more products made in the United States. At present, Mexico for every dollar they import spends 70 cents in American goods.

The U.S. Congress can take an important step toward improving human rights in Mexico, I believe, by passing NAFTA.

Thank you, Mr. Chairman. I look forward to the testimony.

Chairman LAFALCE. Thank you, Mr. Zeliff.

Anybody else? Mr. Flake?

Mr. FLAKE. Thank you, Mr. Chairman.

First, let me thank you for holding another hearing on perhaps one of the most important issues that we will face over the next few months. Additionally, I would like to welcome the panel of witnesses who have come forward to testify.

I believe that it is fitting to discern, prior to any agreement, the human rights conditions in Mexico, and its possible ramifications not only for our Nation but for Mexico as well. Those who have testified before this committee and the Committee on Government Operations, on which I sit, have continually revealed conditions that I consider to be deplorable as it relates to working conditions and wages in Mexico.

It is plain that human rights conditions in Mexico leave much to be desired, and that the judicial system is in a state of disarray.

Therefore, the implications of the United States entering into NAFTA could be dire if we do not continue to address these concerns.

We can neither contradict nor concede the democratic principles upon which our Nation was founded by entering into an agreement with a nation not committed to those same principles. With that in mind, I believe we should ensure that our adherence to moral conditions of human rights within our own borders are enforced.

As we consider ways in which to strengthen our economy by increasing our stake in the global economy, let us begin by addressing the urgent needs of urban and rural economies and human rights conditions in America.

NAFTA is an important accord. However, if we continue to neglect the Third World that has emerged within our own borders by not providing incentives, assistance and investment in them, we will find no agreement will strengthen our place in the global economy.

[Mr. Flake's statement may be found in the appendix.]

Mr. Chairman, again I welcome our witnesses this morning and I look forward to their testimony.

Thank you, and I yield back the balance of my time.

Chairman LAFALCE. Thank you.

If there is nothing further, we will get to our witnesses.

I am delighted to have you testify before us. However, I am disappointed I didn't receive your testimony until this morning.

#### **STATEMENT OF NANCY ELY-RAPHEL, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF STATE FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, DEPARTMENT OF STATE**

Ms. ELY-RAPHEL. I am very sorry, Mr. Chairman. My understanding was it was delivered last evening.

Chairman LAFALCE. Perhaps it was delivered after I left the office, but my staff—and that was about 8 p.m. My staff relayed that they received it this morning. In any event, I haven't had the opportunity to read it.

Also, it is my understanding that the State Department wished to testify first and then be questioned and not appear at the same time with Father Romo; is that correct?

Ms. ELY-RAPHEL. That is correct.

Chairman LAFALCE. Would you be willing to come back after Father Romo so that we can then ask you questions based upon his testimony and his statement? A dual appearance?

Ms. ELY-RAPHEL. My understanding was that I was going to appear alone. I would be happy to respond to questions, but I do have other appointments throughout the day. My understanding was that I would be here at the beginning of the hearing.

Chairman LAFALCE. I just think it would have been helpful if we could have had you respond to some of the comments that we expect him to make. But we will proceed.

We will take the entirety of your testimony and put it in the record as if it were read and you may feel free to either read it or summarize it, as you wish.

Ms. ELY-RAPHEL. Thank you.



Thank you, Mr. Chairman and members of the committee, I am honored to appear before you today. On behalf of the Bureau of Human Rights and Humanitarian Affairs of the Department of State, I want to thank you for the opportunity to discuss human rights conditions in Mexico.

Human rights in Mexico have undergone a considerable transformation in the past few years, one marked by increasing awareness of their importance and concrete steps taken to reduce human rights violations. Nevertheless, as we have detailed in our annual human rights report, serious violations of internationally recognized human rights still persist in Mexico.

Among those serious problems is a political system which is becoming more open but is still flawed. Other problems are the use of torture, widespread brutality and instances of extra-judicial killings by police and a frequent failure to punish those responsible for such transgressions.

Human rights violations, sadly, remain common throughout the world. In examining a government's human rights record, we assess whether a government condones human rights abuses and whether a government attempts to address its human rights problems in a serious and responsible manner.

In the case of Mexico, there is no evidence that the Government condones human rights abuses committed by its agents. On the contrary, President Salinas has publicly and strongly stated the importance of protecting human rights as a matter of Mexican domestic policy and has lent the authority of his office in efforts to reduce violations, most particularly by the establishment of the National Commission on Human Rights. Through increasingly strong legislation, he has also attempted to promote democratization and equity in the electoral process.

The commission is proving effective. It has a mandate to investigate violations of human rights by Government agencies, to report publicly on those abuses, and to promote human rights education of the public. The commission sets up separate investigations into areas of special concern such as disappearances, treatment of indigenous people, attacks on journalists and prison conditions.

From May 1992 to the present, the commission's efforts resulted in disciplinary action against 1,031 Government employees. In 348 of those cases, criminal charges have been filed. It will take some time for the 348 cases to move through the judicial system. We shall track those cases closely.

In June 1992, legislation was passed to create similar human rights commissions at the State level in each of Mexico's 31 States.

The chief criticism of the commission has been its enforcement powers and the fact that it must often rely on the very institutions it is investigating to carry out its recommendations. As a result, some recommendations are often only partially implemented, a fact the commission has publicized.

The Mexican press has strongly supported the commission's efforts and has given its recommendations wide dissemination. While some agencies continue to resist compliance with these recommendations, they will do so increasingly in the harsh glare of publicity.

In January 1993, President Salinas further strengthened his commitment to improve Mexico's human rights record by appointing Jorge Carpizo McGregor, the former president of the National Human Rights Commission, as attorney general, providing the commission with a firm ally in the most important law enforcement agency in that country.

Other efforts to bring Mexico's human rights record into compliance with international standards include legislation recently enacted making confessions inadmissible at trial unless obtained in the presence of defense counsel and a judge or public ministry official, training programs to raise professional standards within the Federal police, and the appointments of respected human rights activists as head of the Mexico City Human Rights Commission and as attorney general for the State of Chihuahua.

Does this mean that Mexico should no longer be of concern to human rights monitors? No. Of course not. Of concern to us in particular are the persistence of human rights abuses perpetrated by Mexican police forces. Also of concern are the weaknesses of the democratic electoral process, although reform efforts are under way.

A culture of impunity or belief by the police forces that they are above the law affects many members of the police and has prevented effective implementation of many of the changes. Despite downward trends in numbers of cases reported by the National Human Rights Commission, police still use torture to coerce confessions from detainees. There are frequent reports of arbitrary detentions and police brutality.

Although the majority of instances of police abuse, arbitrary arrest and torture have been directed against Mexican citizens, there has also been instances of abuse against American citizens. In 1992, the U.S. Government formally protested through official channels 16 cases of torture or other mistreatment by police. It should be noted, of course, that the Mexican Government has also raised with us a number of allegations of abuse of their nationals in the United States.

There are also problems involving the rights of the indigenous. Because many of Mexico's indigenous are marginalized and impoverished, they are often the victims of human rights violations in rural land disputes, such as forcible ejections and police violence. Some human rights groups have called for an amnesty for many indigenous people who, the groups charge, are denied access to fair trials because of language and cultural barriers, as well as poverty. Criminal procedures were recently amended to provide interpreters for non-Spanish-speaking indigenous people.

There were recent reports that the police and the army in Chiapas and Chihuahua States had been responsible for arbitrary detentions, beatings and some instances of torture committed against indigenous people during investigations into the death and disappearances of army personnel. The commission held a public press conference this month to state that it had done a full investigation of the incidents. Among the actions that resulted were the arrest of four army personnel for violations of the military code.

Solutions to Mexico's problems are hindered by a weak judicial system that sometimes fails to observe the rights defendants are

granted by law. Also, factors such as low pay and high caseloads contribute to corruption and inefficiency within the judicial system. This is, however, an area that is also undergoing change. Since Jorge Carpizo became Attorney General, 1,205 officials in his office have been forced to resign, 300 have been prosecuted, and 45 are now in jail serving sentences that average over 5 years each.

Another area of concern is Mexico's electoral process. Since 1929, the Government of Mexico has been controlled by the Institutional Revolutionary Party, or PRI, or its predecessor, which has won every presidential race and every gubernatorial race with the rare exception of one in 1989 and another in 1992. There has been some violence surrounding close elections at the State and local level. Some Mexican voters lack confidence in both the electoral system and PRI's commitment to abide by reforms, and there are still credible reports of election and voter fraud.

Of further concern is the unwillingness of the Government of Mexico to invite official international observers to monitor the elections themselves. International NGO's have, however, been allowed to observe the elections.

The Government of Mexico has responded by enacting a series of political and electoral reforms beginning in 1990. The reforms, enacted as the Federal Electoral Processes and Institutions Code, created an independent and impartial electoral tribunal and introduced a new voter registration system. These electoral reforms have opened up the political system and opposition parties have made gains.

Today, 12 to 15 million Mexicans are governed by the opposition at the State or local level. Opposition parties control 10 percent of Mexico's municipalities, and the National Action Party holds 3 of the 31 governorships, as a result of winning two elections and having their candidate appointed following a disputed election.

This month a special session of the Mexican Congress enacted additional political and electoral reforms to address inequities in the system. The reforms include elimination of the governability clause which granted an automatic majority in the House of Deputies to any party receiving 35 percent of the vote. Other reforms created guarantees that 25 percent of the Senate will be from the opposition; prevented newly elected legislators from approving their own elections, and increased opposition access to the media. In future elections, we will be watching closely to see the effects of these reforms.

Regarding labor, reports continue to arise about the inability of workers to organize, to be able to work in a safe environment and bargain individually and collectively for wages sufficient for daily support. Although the Mexican labor force has enjoyed a high level of unionization, the unions are for the most part linked to the PRI.

The safety conditions in the Mexican workplace are generally improving. Enforcement of health and safety rules is considered effective for large companies, including most maquiladoras, although the compliance of small private business is less satisfactory. Payroll taxes are adjusted according to the safety records of each business operation, and each workplace is subject to labor and management safety and monthly health committee inspections.



The protection of workers' rights in Mexico is limited because they are outside the jurisdiction of the national commission on human rights. Complaints about violations of workers' rights cannot be brought to the commission's investigative forum. An amendment to the commission's initial implementing legislation was passed earlier this year exempting both labor and electoral issues.

In conclusion, Mexico is a nation which has a long history of human rights abuses, but has recently demonstrated strong progress in addressing those abuses. The department strongly supports these efforts by Mexico.

Discussions on human rights are a regular part of our dialog with the Mexican Government. One recent example of that support is the meeting between our U.N. Ambassador Albright and the president of the National Commission on Human Rights this past summer.

Changes are taking place as Mexico modernizes and becomes more open to the outside world. The change is not complete and problems persist; however, the clear trend is toward an improved human rights situation.

Thank you, Mr. Chairman and members of the committee. I will be happy to take any questions you may have at this time.

[Ms. Ely-Raphel's statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much.

Ms. Ely-Raphel, does the State Department have any rating scheme that they use for countries insofar as human rights violators are concerned? Do you give them A's, B's, C's, D's, 1 through 10's, moderate violators, heavy violators, or gross violators? Do you have anything like that?

Ms. ELY-RAPHEL. We didn't really have a grading system. There are gross violators of human rights, and—Iraq, Iran. There are any number of countries. I would certainly not put Mexico in a category anywhere near that.

Chairman LAFALCE. Of Iraq and Iran?

Ms. ELY-RAPHEL. Right.

Chairman LAFALCE. How about within the American context?

Ms. ELY-RAPHEL. Within the Americas? Mexico is an improving human rights situation.

Chairman LAFALCE. We will grant you that. OK. But the question is, how bad is it? Are you going from zero to one? Are you going from one to nine? From one to two? I don't expect you to give me numbers, but let's compare other countries in the Americas. How does it stack up with Costa Rica?

Ms. ELY-RAPHEL. I think it has a long way to go until it is in a league with Costa Rica.

Chairman LAFALCE. I used that as one example, but let's go to some other examples. How does it stack up against Argentina, or Chile?

Ms. ELY-RAPHEL. So many of those countries have changed in recent times. Compared to Chile many years ago, Mexico is——

Chairman LAFALCE. Chile today.

Ms. ELY-RAPHEL. Chile today, I would say Mexico is attempting to get into a similar situation. I wouldn't say that they were synonymous. In a way, it is not really fair to compare the two. The most important thing about Mexico to me in monitoring human

rights is you now have a Government that is very seriously addressing problems that have been long-standing.

Chairman LAFALCE. How long is President Salinas in office?

Ms. ELY-RAPHEL. I believe there is an election in July 1995.

Chairman LAFALCE. 1994? I think. Yes, 1994. I think he was sworn in December 1st 1988. Six years.

Who do we expect him to appoint as his successor?

Ms. ELY-RAPHEL. I have no idea who he would appoint as his successor in the party. However, I would point out that the legislation that he has supported that is now on the books provides guarantees that human rights will improve as time goes on, that is not just tied to that president.

Chairman LAFALCE. Of course, as the United Nations pointed out, there is a disjunction between the laws on the books and the practice. It is not simply the laws on the books, it is the practice. Therefore, who his successor is, he will probably appoint the person to run for the PRI party, which is pretty much tantamount to an election. Future enforcement will pretty much depend on who that person is.

On page 2 you said there are 348 cases where criminal charges have been filed since May 1992 to the present, almost October 1993. You said it will take some time for the 348 cases to move through the judicial system. Have any moved through the system so far, any of the 348?

Ms. ELY-RAPHEL. I would have to check and find out if decisions have been reached in any of these cases.

Chairman LAFALCE. It says we shall track these cases closely. Do we know if even one of them has been moved through the system since May 1992?

Ms. ELY-RAPHEL. I am not sure any sentences have been handed down in any of them.

Chairman LAFALCE. In page 3 you said that one of the chief criticisms of the commission has been its lack of enforcement powers and the fact it must often rely on the very institution it is investigating to carry out its investigations. Can you expand on that a bit?

Ms. ELY-RAPHEL. It has the authority to compel testimony from Government witnesses. However, it is not a tribunal, so it must depend upon the judicial system and the attorney general to bring charges, prosecutors to bring charges against the police—

Chairman LAFALCE. The police brings in the judiciary, et cetera?

Ms. ELY-RAPHEL. Exactly.

Chairman LAFALCE. On page 4 you said, "Despite downward trends in the number of cases reported by the National Human Rights Commission, police still use torture to obtain confessions from detainees."

How often do we believe the police use torture? I am not talking about American citizens, I am talking about their own citizenry. How often do they use brutality?

We say there are frequent reports of arbitrary detention and police brutality. To be sure, it might exist within the United States on occasion. We happen to think it is very, very rare. When it does exist, wow, do we go after it.

I don't think you can make a comparison. You can make a contrast, perhaps. Can you give me some yardsticks? You can't give me so many per day, but what can you tell me to better amplify that picture?

Ms. ELY-RAPHEL. We keep statistics by the year and we put these figures into our human rights report. The number of cases of torture has declined for example. In 1992, the number of cases of torture were half of what they were in 1991. So we can see that the numbers are dropping.

Chairman LAFALCE. You said that. You said, "despite downward trends." But still, I wanted to know, what is the general frequency?

Ms. ELY-RAPHEL. I believe there were 72 cases in 1991, and 42, half that number, the following year, in 1992.

Chairman LAFALCE. That is torture you are talking about?

Ms. ELY-RAPHEL. Right.

Mrs. MEYERS. Mr. Chairman, I wonder if I can make a request.

Chairman LAFALCE. What is your request?

Mrs. MEYERS. It is a rule in the House and a rule on this committee that we question in 5-minute intervals, the 5-minute rule. Since we have so many Members here today on both sides, I wonder if we could observe the 5-minute rule.

Chairman LAFALCE. The lady's point is well taken. The gentleman rules to Ms. Meyers.

Mrs. MEYERS. I would like to defer questions to Mr. Johnson, please.

Mr. JOHNSON. Thank you.

Thank you, Mr. Chairman.

Do you know how many torture violations we have in this country, to pursue what he was saying? Seventy-two doesn't sound like a great number for a country like Mexico to me.

Ms. ELY-RAPHEL. How many we have in the United States?

Mr. JOHNSON. Yes.

Ms. ELY-RAPHEL. I would have to inquire. We monitor countries—

Mr. JOHNSON. Foreign countries.

Ms. ELY-RAPHEL. [continuing] foreign countries, and I think it would be up to the Department of Justice to have figures on—

Mr. JOHNSON. I bet they don't. What do you bet?

Since we are talking about NAFTA, what can be done as far as NAFTA, the NAFTA agreement is concerned, to strengthen our relationship with Mexico vis-a-vis human rights, and is there anything that really directly impacts on trade that we can do to improve that situation?

Ms. ELY-RAPHEL. Well, I think NAFTA provides us with an extraordinary opportunity to improve the human rights conditions in Mexico. It will enable us to have added leverage with the Government of Mexico to raise human rights issues.

Under this agreement, I understand, both Governments have agreed to enforce the labor laws of their respective countries, and this will provide us with a tremendous amount of leverage in raising labor issues, worker issues, child labor issues, and health and safety issues with the Government of Mexico.



Mr. JOHNSON. The Chairman also made the point that perhaps their laws would not be abided by totally with a different administration. Do you see any truth to that?

I am told that Mexico is probably about where we were in the 1940's or 1950's, and they are going to come around fast. Do you have any comment on those two issues?

Ms. ELY-RAPHEL. I would point out, when a State enters into an international, legal obligation through an agreement such as this, one success or government is bound by the agreement of the prior government. So I can see only an opportunity for improvement as a result of our entering into this agreement with Mexico.

Mr. JOHNSON. Thank you.

Thank you, Mr. Chairman.

Chairman LAFALCE. Either I can call on another Member now or we can recess. Is there any Member who wants to be called upon now?

Mr. Klink, did you want to speak?

We will recess. We have a vote pending. We will recess and try to be back in 10 minutes. Five minutes to go, 5 minutes to get back.

[Recess.]

Ms. ELY-RAPHEL. Mr. Chairman, I would like to clarify the record, if I might, on one question that was asked of me before, and that was on the question of the statistics on torture in Mexico.

The statistics I was giving you were the statistics of U.S. citizens who had alleged that they had been abused or tortured during confinement in Mexico. The figures were 97 in the first 9 months of 1990, and 40 in the first 9 months of 1993.

The Commission on Human Rights in Mexico received 422 complaints of torture country-wide in 1991, in 1992 they received 292 complaints of allegations of torture.

Chairman LAFALCE. Thank you. You may want to repeat that when Ms. Meyers and Mr. Johnson return.

Until the other Members get back, I will ask you a few more questions.

You talked a bit about—well, you said that, on page 5, in Chiapas and Chihuahua, among the actions that resulted were the arrest of four army personnel for violations of the military code. How high ranking were these army personnel?

Ms. ELY-RAPHEL. I believe they were officers but I do not know.

One officer and three enlisted men. The officer was a lieutenant, I have been told.

Chairman LAFALCE. As I understand it, the police involvement—the army involvement, the police involvement was pretty pervasive in Chiapas and Chihuahua; is that correct?

Ms. ELY-RAPHEL. The police and the military were both involved in the incidents.

Chairman LAFALCE. We weren't just talking about a small handful. We were talking about endemically. It seems to me that three enlisted personnel and one lieutenant—which is pretty low ranking, that is pretty low level. So we really haven't scratched the surface there, have we?

Ms. ELY-RAPHEL. I believe that the commission is investigating—

Chairman LAFALCE. I just wanted to point out that I don't think that is too significant. Some people might say, Oh, hey, these are scapegoats, these are individuals who are just going to be used to say something is being done, but the real parties are not being pursued. Are you investigating that?

Ms. ELY-RAPHEL. We are monitoring the case, and we have had officers looking into it very carefully.

Chairman LAFALCE. I think it is important that you keep on that.

Well, I don't know. Mr. Klink, I think you were next, but on the other hand, Ms. Velazquez—you don't have a time constraint, do you? Then I go with Mr. Klink.

Mr. KLINK. Thank you, Ms. Ely-Raphel. Can you tell me, how was President Salinas put into office? How did he become President of Mexico?

Ms. ELY-RAPHEL. I believe he was elected in a national—nation-wide election.

Mr. KLINK. His term is up fairly soon?

Ms. ELY-RAPHEL. Yes, that is correct.

Mr. KLINK. What is your understanding as to how his successor will be chosen?

Ms. ELY-RAPHEL. My understanding is there will be another nationwide election in Mexico.

Mr. KLINK. Again, the election occurs within one party, as I understand it, the PRI, which virtually has a death-hold on the Mexican Government. Is that correct?

Ms. ELY-RAPHEL. No, with the reforms—the prior elections were open to multiparties in Mexico, and my understanding is with the new reforms that have been instituted, the political process will be more open than it has in the past. The other parties will have more access to the media.

There is a voter registration program that has been instituted which will provide registration cards with photographs. A much more effective system of monitoring the elections.

Mr. KLINK. What are the guarantees that this in fact will occur?

We have heard testimony that the Mexicans are wonderful for having systems in place, they are wonderful for having great laws, including environmental laws, labor rights laws, but enforcement, we are told, does not occur. In fact, we have been told it is really a way of life down there to find ways around it. In other words, instead of paying the fine, how much do I pay you so I don't have to pay the fine. How do we know this is really going to occur?

Ms. ELY-RAPHEL. Well, as I have said, the opposition party has won elections and is now heading the State Government in three States in Mexico. The most recent elections have permitted participation by other parties.

I can't predict what will happen. I can only say that from the evidence we have seen most recently, and if the new regulations are implemented, and I have no reason to suspect they will not be, I would suggest that the chances for a more open political electoral contest in the next Presidential election would be possible.

Mr. KLINK. How long has this process of putting a NAFTA agreement been going on between the United States—what is your understanding?

Ms. ELY-RAPHEL. I frankly don't know when the NAFTA agreements were negotiated. I have been primarily focused on the human rights area and not on the negotiation of NAFTA.

Mr. KLINK. Then let me just ask you this. In the last 2 to 3 years, do you have any idea how many opposition party political leaders have been assassinated in Mexico?

You talked about torturing and you talked about other abuses. Do you have any idea of the number of opposition political leaders that have been assassinated?

Ms. ELY-RAPHEL. There have been allegations of murder. I do not recall that anyone was charged and convicted of assassinating someone. I would have to look into that and get back to you. That I have not heard.

Mr. KLINK. Any idea how many opposition leaders have mysteriously died prematurely?

Ms. ELY-RAPHEL. I would have to check on that.

Mr. KLINK. I wish you would do that.

Ms. ELY-RAPHEL. I will.

Mr. KLINK. Can you tell me also, you mentioned the fact that the cases of human rights violations that you have seen have eased up in the last year. Could that have anything to do with the fact that we are negotiating a NAFTA agreement with Mexico and that they see great economic prosperity around the corner if they are to become a platform for importation into the greatest consumer market in the world?

Ms. ELY-RAPHEL. I am not in any position to tell you what is in the mind of the members of the Government of Mexico. I will say that I think that the appointment of the present Attorney General who was the Chairman of the Commission on Human Rights before becoming an Attorney General in Mexico was a remarkable improvement in the human rights situation in Mexico.

He is in the process of—and has brought charges against members of the staff of the office that he heads. He has fired judges. He has instituted training. That has never existed before in the Attorney General's office. So I find these developments a major improvement.

Mr. KLINK. Why that major improvement now? Why is it happening now?

I will ask my second question at the same time. What assurance do we have, if and when NAFTA were to pass, that those types of changes would still continue?

Ms. ELY-RAPHEL. Judges are being appointed who will be serving long after the current Government is out of office. The process began in 1990. The new Attorney General was appointed in 1993. I know of his reputation, and he had an outstanding reputation when he was the head of the Commission on Human Rights.

Mr. KLINK. The first part of my question was, why now?

Ms. ELY-RAPHEL. You would have to ask that of the Government of Mexico.

Mr. KLINK. I think I know why now. I think it is because of NAFTA. I think because they want access to our market.

My point is this. If you have any facts to dispute this—my point is this. Once this is instituted, there is absolutely no incentive on



their part to continue any kind of reform in that country, political, social or otherwise.

Ms. ELY-RAPHEL. I would suggest that if NAFTA is passed, we will have a great deal more leverage with the Government of Mexico than we have presently, because they will have committed themselves to enforcing their labor laws, doing all kinds of things that they are not now legally obligated to us to do.

Mr. KLINK. My understanding is they are committed now, they have laws on the books they are not enforcing. You have to take a look—when I go back to run for reelection, I was never in public office before, and so the people had to take me at face value. But when I go back to run for reelection, they are going to take a look at my record. I have to take a look at the record of the country of Mexico.

We have witnesses in front of us in this committee and other committees to tell us in fact, that President Salinas will be hand picking his successor, and that that is exactly the way their elections are going to go. It is preordained. Do you have information that is different than that?

Ms. ELY-RAPHEL. All I am saying is that if this agreement is passed and implemented, it will give people in my position in the human rights bureau more leverage in raising these issues with the Government of Mexico when there are allegations that they are not abiding by their agreement. That is all I am saying.

Chairman LAFALCE. Ms. Velazquez?

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

I would like to make a request that after we hear Father Pablo Romo Cedano, if any question that may arise for her that we could be—for Ms. Ely-Raphel, we could submit them in writing.

Chairman LAFALCE. Yes, without objection, so ordered. I am sure the State Department would be pleased.

Ms. ELY-RAPHEL. We would be happy to respond to any questions that come up after the next witness.

Ms. VELAZQUEZ. When I was in Mexico, I spoke to hundreds of people who expressed to me their lack of confidence in their Government, political system and electoral system, a Government by which they do not feel truly represented.

They especially spoke to me of the suspicious circumstances surrounding Mr. Salinas' election as President of Mexico. Can you comment on that?

Ms. ELY-RAPHEL. My understanding was that there were non-governmental organizations that were in Mexico who observed elections and found that they were, although flawed, open, and verified the results of elections. I believe the National Democratic Institute and the National Republican Institute sent delegations to Mexico to observe elections.

Ms. VELAZQUEZ. Not only Mexico, but also here, I have heard many people saying that President Salinas was illegally elected. You don't feel that way?

Ms. ELY-RAPHEL. There are allegations, I am sure, in many elections around the world, that citizens make. I think they are free to make the allegations.

Ms. VELAZQUEZ. You have spoken quite a bit about Mexico's human rights violations, Mexicans against Mexicans. What about

the plants in Matamoros, the children playing in toxic waste. Aren't these violations of human rights? These have been committed by our American corporations, Zenith, GM.

Ms. ELY-RAPHEL. There again, as I said before, if we have an agreement, NAFTA has provisions in the signed agreement where we can raise issues of child labor, and that will give us a great deal of leverage with the Government of Mexico to look into those issues.

Chairman LAFALCE. Could you explore that? What does it mean by raise issues? We can raise issues today. What leverage do we have? Just using your words, what is the additional leverage? What does it mean to look into it?

Ms. ELY-RAPHEL. I deal with countries all around the world, and here you have a country reaching out its hand and saying, "We are willing to work with you, we are willing to improve the conditions in our country," and they are laying out a series of areas in which they are willing to do that. That is very unusual.

Frequently, it is very difficult for us to raise issues with other governments. It is very difficult for us to raise issues of torture, to raise issues of child labor. Sometimes the governments don't want to deal with us. But in this case you have a State like Mexico which is willing to, anxious to and indeed has negotiated this agreement which then gives us an opportunity, people like myself, to raise these issues with our counterparts in the government and have them listen to us.

Chairman LAFALCE. Come on. Isn't it a worthless piece of paper? If they want to be receptive when you raise it, they will be receptive. If they don't want to be receptive, they are not receptive.

Ms. VELAZQUEZ. I don't think you answered my question. I would like you to comment to the fact that American corporations are violating the rights of Mexican workers and children. Do you have any comment on that?

Ms. ELY-RAPHEL. If there are violations, we would look into it and we would report them in our human rights report.

Ms. VELAZQUEZ. You don't think an environmental mess has been created on the border?

Ms. ELY-RAPHEL. I can't comment on the environmental conditions. I frankly have not looked into that.

Ms. VELAZQUEZ. I would suggest that you do.

Ms. ELY-RAPHEL. I look into the human rights conditions.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman LAFALCE. Do you have any questions, Mr. Portman?

Mr. PORTMAN. I am sorry I couldn't be here for your testimony. I appreciate your coming.

I was interested in your comments as to how the human rights situation might be improved. Mexico does not have a perfect human rights record, and it seems to me it should be in the interests of this panel and of this Congress and of the United States as a Government to improve Mexico's human rights situation, just as it tries to improve human rights around the world.

I served as an alternate delegate to the United Nations Human Rights Subcommittee until being elected several months ago to Congress. Mexico does have problems. But it seems to me ulti-

mately it comes down to leverage in terms of improving a country's record.

I guess what I am hearing you saying is that there will be additional economic leverage as well as diplomatic leverage that will be gained by a NAFTA accord that perhaps we do not have now.

My colleague has raised some appropriate questions about the current situation with the maquiladoras and U.S. companies having some role in the current working conditions of U.S. workers and so on. But are you saying under the NAFTA agreement the United States would then have leverage that perhaps we do not have now—economic as well as diplomatic—to try to get Mexico to do the right thing and to improve its human rights record?

Ms. ELY-RAPHEL. Yes, that is exactly my point. We will have a lot more diplomatic leverage than we have today. In my view we certainly will have more than if we turn our backs on the Mexicans and do not go ahead with the agreement.

Mr. PORTMAN. Thank you.

Chairman LAFALCE. I remember going to Chile, I forgot what year it was, 1979, early 1980's. Pinochet was still in office. There were some serious human rights abuses, torture, beatings, et cetera. But one thing that they stressed in their conversation with me was, consider the totality of Chile, consider economic right, the rights to a job, the right to a decent wage, the right to have bread on your table, when considering the country. Consider the totality of the country. I think there is truth to that statement.

There was also truth that we wanted to talk about torture, beatings, brutality, et cetera. We have focused in on something very important so far. Torture, brutality, the police system, and the judicial system. But does your office also look into the question of economic rights as part of human rights?

Ms. ELY-RAPHEL. Yes, we do. That is also part of human rights—economic, cultural, and social rights.

Chairman LAFALCE. All right. Well, then, let's discuss the economy within Mexico. I have been told that there is a tremendous concentration of wealth within Mexico, probably more so than most countries on the face of this Earth. What do you have to say about the concentration of wealth within Mexico?

Ms. ELY-RAPHEL. I am not sure I understand your question.

Chairman LAFALCE. Well, there is a certain amount of wealth in every country, and in some countries it is more diffused amongst the total populace than in others. Within Mexico, I am told, a handful, relatively a handful of families has virtually all the wealth of Mexico, and countless millions of others have crumbs.

Do you study the issue of concentration of wealth? I have been told, for example, there are about 30 top families in Mexico, and they have been creaming off whatever this Mexican economy produces, and that not only have there not been changes to improve the situation under Salinas, but that the concentration of wealth has gotten worse under Salinas. Do you know anything about this?

Ms. ELY-RAPHEL. I am afraid I really can't comment on the economic structure of the wealth of the families of Mexico. I would be happy to—

Chairman LAFALCE. I think this is a very, very important issue, because on the one hand we are talking about however many tor-



tures take place, whether it is 700, 400, or as others would say, thousands and thousands and thousands that are not reported, but are pervasive. That is one.

But when you are talking about whether individuals who work get a decent wage, a just wage which is part, in my judgment, of a person's God-given right, that is important as a human right. If all this wealth that is being produced, however much it is, is being taken off the top by, say, 30 families, each of whom might give \$25 million to promote NAFTA, or each of whom might give \$25 million to promote the PRI party, we ought to know about it and be concerned about it as a human rights issue. Am I right or wrong?

Ms. ELY-RAPHEL. I am sure you are right. I can only point out that the labor conditions and the labor standards include minimum wage and health and safety provisions. These are all in the laws on the books in Mexico.

Chairman LAFALCE. I am told they are not enforced at all.

Ms. ELY-RAPHEL. I think I would disagree. They are enforced. I think we will have a better opportunity to make sure that they are enforced.

Chairman LAFALCE. We have a right to work, we have a right of workers to associate. I think these are basic rights. We recognize them in our own laws, we recognize them in international treaties. The Mexican Government has signed treaties recognizing them. But it is my understanding that their workers' associations are under the arm of the PRI party; they are under the arm, therefore, of the Government. They really do not have independent labor unions. I think you said something in your testimony to that effect, too; is that correct?

Ms. ELY-RAPHEL. I did say that they have had problems in the past and have been under the control of the PRI. However, I did say that the situation is improving, and—

Chairman LAFALCE. You said the protection of workers' rights is still outside of the jurisdiction of the National Commission on Human Rights.

Ms. ELY-RAPHEL. That is correct.

Chairman LAFALCE. That they still exempted all labor and all electoral issues from the implementing legislation with respect to the National Commission on Human Rights.

Ms. ELY-RAPHEL. That is correct. But, as I understand it, if NAFTA is implemented, there will be ways in which one can monitor the labor conditions much more effectively than we can today from the United States in Mexico.

Chairman LAFALCE. How is that?

Ms. ELY-RAPHEL. I understand that—and you really should talk to the lawyers at the Department of Labor, but from my understanding there are provisions in the agreement that obligate both States to implement the laws, the labor laws that are on the books. These are issues that we can then raise with the Government of Mexico if they are not abiding by their laws.

Chairman LAFALCE. We write our human rights reports, the State Department does it, but do they do it all by themselves? Do they call upon the Labor Department to do a portion of it? Do they call upon other agencies of the United States Government to do a portion of it? Or do they do it all?

In other words, if we are going to have some written document on the economic rights of the Mexican worker, is this something that your office would do, or is this something that the Department of Labor might do, and then submit to you? Does the Department of Labor have within it an office of human rights? Who is doing the monitoring on these issues?

Ms. ELY-RAPHEL. You mean the monitoring of the implementation of NAFTA?

Chairman LAFALCE. Who is doing the monitoring of these issues right now? We have been writing the reports from the State Department for years under congressional mandate.

Ms. ELY-RAPHEL. Right. We have a section in all our human rights reports that addresses labor rights and worker rights.

Chairman LAFALCE. Who gives you the information on this?

Ms. ELY-RAPHEL. We have labor officers in our embassies who travel around the country and talk to the unions, talk to the workers, and write up these reports, talk to the nongovernmental organizations, and provide the information that is in our human rights reports.

Chairman LAFALCE. Mexico has undergone a number of privatizations of different companies, as have a great many countries of the world. Most countries are getting into privatizing Argentina, Chile, Poland, et cetera. Mexico has too. But I have heard that in Mexico, whenever a privatization takes place, it is, again, these handfuls of families are the ones benefiting from it.

Do we have anybody who looks into who benefits from the privatizations that are taking place in countries that we monitor for human rights purposes?

Ms. ELY-RAPHEL. I am sure we do.

Chairman LAFALCE. Would you follow up on all these questions I have asked in writing, please?

Ms. ELY-RAPHEL. I would be very happy to.

[The Questions may be found in the appendix.]

Chairman LAFALCE. Any other questions, or shall we go on to Father Romo?

No further questions.

Thank you very much.

Ms. ELY-RAPHEL. Thank you very much, Mr. Chairman, and members.

Chairman LAFALCE. It might be helpful if some representative of the State Department might stay to learn, if not respond.

Ms. ELY-RAPHEL. I believe they are.

Chairman LAFALCE. Father Pablo Romo Cedano, executive secretary for the Center for Human Rights, Diocese of San San Cristobal de las Casas, Chiapas, Mexico.

Father Romo, we are delighted to have you with us. Congratulations to you and to the bishop on your awards for your work in human rights in Mexico.

You may either read your prepared statement or you may summarize it or say anything you want, as you wish.

**STATEMENT OF FATHER PABLO ROMO CEDANO, EXECUTIVE SECRETARY, CENTER FOR HUMAN RIGHTS, DIOCESE OF SAN CRISTOBAL DE LAS CASAS, CHIAPAS, MEXICO**

Father CEDANO. Thank you, Mr. Chairman. I prefer to read it.

Honorable Chair, members of the committee, I thank you sincerely for giving me this opportunity to present testimony concerning the human rights situation in Mexico, specifically in the State of Chiapas.

My name is Pablo Romo. I am executive secretary of the Center for Human Rights, Fray Bartolome de las Casas. The center is a nongovernmental organization whose objective is the promotion and defense of human rights. It was created 4 years ago by the Catholic Diocese of San Cristobal de las Casas, led by Bishop Don Samuel Ruiz Garcia.

The center responds to cases presented to it by individuals and groups as well as to those cases whose seriousness affects the community at large. It acts without distinction on account of religious belief or political opinion, with special concern for those who are marginalized from society, especially the poor and indigenous people.

As you are aware, I present this testimony in the context of the increasing economic integration between Mexico and the United States. This integration, including the North American Free Trade Agreement, must not proceed without careful consideration of its effects on human rights and the advancement of democratic values in Mexico.

The State of Chiapas is located in the southeast of Mexico bordering Guatemala. Chiapas is marked by many contrasts. Its wealth in natural resources stands in dramatic contradiction to the poverty of the majority of the people. The minimum wage in Chiapas is equivalent to \$4 a day. Of the economically active population, 59 percent receive the minimum wage or less, while 1.3 percent receive more than 10 times this wage. Three-fourths of the population 12 years old or older have less than a primary school education, and only 1 percent of those working are professionals.

Causes of death in the State of Chiapas, especially in the Indian communities, are the same as they have been for the past 40 years: Intestinal and respiratory infections, and malnutrition. More than 8 million Mexicans live in indigenous communities where the mortality rate is 12 percent higher than it is in the rest of Mexico. Deaths from tuberculosis in Chiapas are the highest in the country. Between January and October 1992, 3,000 cases of malaria were reported. In recent months, 71 children were born without brains, apparently due to malnutrition.

Politically, the State is highly unstable. In the last 2 years, there have been 23 changes in municipal presidents; in other words, almost 25 percent of the local governments have changed between elections. Almost all of this change occurred in the first 6 months of this year. Eighteen of the presidents were forced to renounce their positions because of political conflicts.

In recent months authorities have attempted to curb abuses committed by the police and correct negligence by the Public Ministry. Nonetheless, the administration of justice and the defense of citizens has not improved structurally.



Our Center for Human Rights continues to document numerous violations of individual and collective guarantees. The social situation has not improved significantly, and it seems that certain guarantees won earlier are in fact eroding. Continuing political conflicts at the local level demonstrate an alarming level of public discontent due to incapacity of the municipal and State authorities to respond to public problems.

Up to now, not a single violator of human rights in Chiapas has been subject to sanctions, despite recommendations by the National Commission of Human Rights, CNDH, that sanctions be applied. The Commission, established by the Federal Government in June 1990, has not been very effective. According to its president, only 30 percent of its recommendations have been fully implemented.

The Center for Human Rights, Fray Bartolome de las Casas, continues denouncing human rights violations as cases come before it. These include arbitrary executions, torture, illegal or arbitrary detentions, abuse of authority, forced exile, intimidation by authorities, and mistreatment of prisoners. The center also confronts agrarian conflicts and cases of impunity.

In its last report, the center denounced 106 cases in which one or more rights of individuals were violated, not counting cases of forced exile which affected 32 families—more than 160 people—in the first half of this year. Of the 106 victims whose rights were violated, 73 percent were indigenous people, 11 percent were minors, and 87 percent were peasants.

It is important to emphasize that certain serious violations of human rights occur with disturbing regularity. For example, arbitrary detention occurred in 92 percent of the cases presented. Abuse of authority occurred in 76 percent of the cases. Agents of the Public Ministry violated human rights in a high number of cases. Torture was used to elicit confession with great frequency.

From these facts, it is evident that human rights in the State of Chiapas are in extreme jeopardy. The following case illustrates the severity of the situation.

This case involves multiple human rights violations, including arbitrary detention, abuse of authority, lack of legal representation for the accused, prolongation of the legal process, negligence in police investigation, partiality in the sentencing, and impunity. It is just one illustration of many cases marked by the same type of violations and miscarriage of justice.

On December 9, 1992, near the indigenous community Tzajalch'en in the municipality of Chenalho, three brothers, Vincente, Nicolas, and Lorenzo Gutierrez Hernandez, were attacked with firearms. One of the brothers died and the other two were seriously wounded. The assailants also destroyed the victims' houses and raped their wives.

The roots of this conflict lie in land tenure problems which the Secretary of Agrarian Reform has not resolved, despite a complaint submitted to him over 8 years ago. Since the assailants had seized the land in question, they were well-known by everyone in the area.

On December 10, 1992, the Trustee and Municipal Judge of Chenalho fraudulently ordered the apprehension of five men who had helped take the wounded to the municipal center. This wrong-

ful detention was motivated by the friendship between the local authorities and the actual assailants.

Those detained were handed over to the Public Ministry in the city of San Cristobal de las Casas on December 10 and brought before the penal judge on the 13th. On the 14th and 15th they delivered a statement prepared without the assistance of a lawyer.

These events violate two rights guaranteed by the Mexican constitution: First, the period allowed for a legal investigation was not honored; and second, the right to a lawyer was not observed. The public ministry never went to the site of the events to verify the declarations, nor did they reconstruct the events.

Influenced by personal interests, the judge issued formal charges against the detained. This clear injustice provoked a significant mobilization among the people of the municipality, forcing Judge Yanez Mijangos to alter the charges. Then on January 7 the five detainees were freed "for lack of evidence."

Due to several factors, above all national and international pressure, as well as public indignation, the five detainees were freed. Nevertheless, the authorities responsible for the violations described above were not penalized; there has been no resolution of the irregularities in land tenure which gave rise to these events; the victims have received no compensation; and the actual aggressors have escaped punishment completely.

It is clear that judicial authorities in Chiapas were motivated in this case neither by impartiality nor by concern for justice, but rather by political interests. Only as a result of pressure from the public and from nongovernmental organizations were the innocent freed.

Honorable Chair, Members of the committee, the above case demonstrates that human rights problems endemic to Chiapas are due neither to lack of discipline on the part of a few law enforcement officers, nor to excess or negligence on the part of certain judicial authorities. Rather, it is a question of fundamental problems.

The Mexican judicial structure itself denies access to simple justice, and the agricultural bureaucracy functions in a negligent, biased, and sluggish manner.

In its most recent report, Amnesty International very aptly describes the Public Ministry's monopoly in penal matters in Mexico. I quote: "It is responsible for the judicial police; it monopolizes control over the crimes under its jurisdiction; acquisition, evaluation, and eventual presentation of evidence before the courts; recommending terms of sentencing; assuring that judicial laws and the rights of the accused, including the right to appropriate processing, are respected. The public ministry is also charged with investigating violations of human rights, including those committed by law enforcement officials who fall under its jurisdiction."

Under these circumstances, when an agent of the public ministry has personal interests in a case, or when corruption exists, an innocent detainee has very little chance of going free.

Further aggravating this situation, this past August the Federal Congress of the Republic approved an initiative expanding the powers of the public ministry on the pretext of combatting organized crime. Many human rights organizations, lawyers and civic groups have declared their opposition to this legislation. These reforms re-

strict individual guarantees, enable the public ministry to initiate detentions without judicial orders, and expand the period during which the public ministry can detain a presumed offender.

All these things prompt us to affirm that persistent human rights violations in Chiapas are structurally caused by the judicial system itself. The reforms that the Mexican Government has undertaken to avoid such violations are still barely effective. In fact, some of the constitutional reforms of the last years point not to effective defense of human rights, but rather, it seems, just the opposite.

Honorable Chair, members of the committee, once again I thank you for this opportunity to present this testimony.

In Chiapas, thousands of indigenous people and peasants strive day after day for meaningful change in their living conditions. They also hope for respect for their culture, customs, and above all, their human dignity. We continue accompanying them on their way, united with them in their aspirations.

As the U.S. Congress considers NAFTA, it must take into account the enormous effects that economic integration will have on the daily lives of millions of impoverished peasants in Mexico whose human rights are already at risk. We must work together to guarantee all human rights for all people.

Thank you very much.

[Father Cedano's statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much, Father.

You said that this past August the Federal Congress expanded the powers of the public ministry on the pretext of combatting organized crime, but that they were able to use this expanded power to restrict and violate individual human rights. Could you expand upon that a bit?

Father CEDANO. I am sorry, I will answer in Spanish.

Chairman LAFALCE. Surely.

If I may interrupt you, I think it would be helpful if you gave a sentence or two at a time and had that translated, then give as many sentences as you want to, rather than giving your total statement.

Father CEDANO. [Through the translator.] In fact, the Federal Congress approved a short while ago, a few weeks ago, this law that grants greater power to the public ministry. The nongovernmental organizations as well as the human rights organizations, both within Mexico as well as internationally, are fully aware of the power that is already in the hands of the public ministry. This reform will translate itself in an even greater power in the hands of the public ministry, power by virtue of which it is possible for the public ministry to detain without any judicial order someone for the simple fact of being a suspect of a crime. They can also maintain this person detained for 96 hours.

Both the organizations of human rights, as well as others, are fully aware of the fact that precisely the period of time in which greater and more numerous violations of human rights take place is precisely in this period that goes from the detention of the suspect until that person is presented to a judge. Previously that period was only 48 hours. Now it has been increased to 96 hours.



Chairman LAFALCE. Ms. Velazquez, we are going to give you the first crack.

Ms. VELAZQUEZ. When I went to the maquiladoras to visit the workers, I heard complaints and I saw many children and elderly people suffering from intestinal and respiratory infections, like in Chiapas.

Father CEDANO. [Through the translator.] In the region that falls within our sphere of action as the Center for Human Rights, there are very few factories. There was one factory who had to close its doors due to modernization streamlining, and this factory was for textile products.

Ms. VELAZQUEZ. Do you think that with the signing of the agreement of NAFTA, that human relations in Mexico will improve?

Father CEDANO. [Through the translator.] Our organization of human rights has no position regarding NAFTA. We are neither for nor against the free trade agreement. But we do believe—we wish that whether or not NAFTA is approved, that it will be possible to reach an improvement in the human rights situation in Mexico.

It is our view that trade agreements—and I am not referring necessarily to the NAFTA agreement—should include in the agenda the possibility of verifying, of checking, and also of improving the human rights.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman LAFALCE. Mr. Portman, do you have any questions?

Mr. PORTMAN. Thank you for your testimony.

I guess my question really follows onto my colleague's question, and that is, what do you think, not having taken a position on NAFTA, would be the most effective way for the U.S. Government to encourage Mexico, for instance to make the constitutional reforms you spoke about? Do you think it would be through economic leverage? Do you have any sense of how we can best encourage Mexico as a Government to make the kind of reforms we would like to see?

Father CEDANO. [Through the translator.] I am no expert regarding international relations. My job, my task within the sphere of human rights is directed mostly toward the peasants and the indigenous people of my country. I think all of you know better than I do the international mechanisms that could be used in order to improve human rights both here in this country as well as in other countries of the world.

I think that it is well-known that both Mexico—I mean, neither Mexico nor the United States have signed or ratified all the international agreements and protocols in human rights. I do believe that a very important step toward a better situation of human rights would be to get both countries to sign or ratify all of these agreements. Very especially, the agreement of the United Nations and the OAS regarding human rights.

Mr. PORTMAN. Thank you.

Chairman LAFALCE. Father, let me explain some of the procedures of the House of Representatives. When those bells ring, it means we have a certain period of time to go over to the floor of the House for a vote. The bells have rung twice on two occasions, which means we must recess. Because of the time, I will not reassemble. We will simply adjourn. But I look forward to seeing you

at another meeting that I have called, along with Congressman Bonior, at 1 o'clock. I leave you in the able hands of my assistant, Dr. Seiber.

I thank you very much for your testimony.

Before we finally conclude, I am going to recognize Congressman Poshard.

Mr. POSHARD. Mr. Chairman, thank you.

I would like to ask unanimous consent to submit a statement for the record and to thank the Father for being here and enlightening us on this human rights situation.

[Mr. Poshard's statement may be found in the appendix.]

[Mr. Ramstad's statement may be found in the appendix.]

Chairman LAFALCE. Thank you, Father. We will see you at 1 o'clock.

Thank you.

[Whereupon, at 12:05 p.m., the committee was adjourned, subject to the call of the Chair.]

## APPENDIX

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STATEMENT OF REP. JOHN J. LaFALCE

COMMITTEE ON SMALL BUSINESS

HEARING ON "HUMAN RIGHTS IN MEXICO: IMPLICATIONS FOR  
NAFTA AND U.S. BUSINESS"

Today the Small Business Committee convenes to more closely examine the human rights issues raised at the Committee's hearing on February 25 in which we considered the business climate in Mexico. At that time, witnesses' reports of political, labor, and judicial human rights abuses were compelling.

The President for the nongovernmental Commission for the Protection and Promotion of Human Rights revealed that the United Nations Committee Against Torture met in November 1992 to review Mexico's record on human rights and implementation of the U.N. Convention Against Torture. The U.N. Committee rejected the Mexican Government's report and assertions that great strides toward eradicating torture had been made. The Committee found a "distressing disjunction between legal reforms and actual practice." It instructed the Government to submit another report in 18 months. This morning we have an impressive panel of experts, all with front line experience in Mexico, to provide the details of what is actually happening in Mexico.

When the United Nations World Conference on Human Rights opened in Vienna two weeks ago, Secretary of State Warren Christopher gave an impassioned speech on the role of human rights if societies are to be truly free and democratic. He said, "In the battle for democracy and human rights, words matter, but what we do matters much more." He recalled with pride his chairmanship of the U.S. Government's first interagency group on human rights. He also asserted that "my country will pursue human rights in our bilateral relations with all governments--large and small, developed and developing...(and)...we will weigh human rights considerations in trade policy..." I agree. And surely the Secretary will not have meant to exclude NAFTA from this principle.

As our potential newest free trade partner, we should be aware that Mexico continues to abuse human rights. Last month Cardinal Juan Jesus Posadas Ocampo was murdered in the parking lot of the international airport at Guadalajara. The Mexican Government has changed its account of the incident, but there are reports alleging that the Federal Judicial Police had a hand in the slaying--or at least in the getaway by the drug gangs. In January 1993, President Salinas appointed Jorge Carpizo MacGregor Attorney General of Mexico who is in charge of the investigation into the Cardinal's murder. Mr. Carpizo had been President of the government's



National Human Rights Commission and has had the confidence and respect of even the government's critics. The international community certainly will watch how Mexico investigates and prosecutes the perpetrators of this crime.

The State Department's most recent report on human rights concludes that incidents of abuse have declined but are still quite substantial. For example, the Human Rights Commission received 736 complaints of torture in its first two years, 1990-1991 and complaints declined sharply to 292 from December 1991 to December 1992 compared with 422 the previous year. Incidents of arbitrary arrest and imprisonment occur frequently and are the most common complaint--indeed, there were 10,244 such complaints in the two years ending June 1992.

These are not just abuses against Mexican citizens. In 1992, the U.S. Government formally protested the death of two U.S. citizens while in police custody--allegedly suicides. In the year ending September 1992, 41 U.S. citizens complained of police abuse. By the end of 1992, the U.S. Government formally protested 16 cases of torture or other mistreatment of U.S. citizens.

There are those who say that NAFTA will promote or consolidate efforts to turn around human rights abuses because Mexico will be in the international spotlight much more. However, if NAFTA is to be agreed to, I believe NAFTA should be the carrot to clean up human rights abuses before hand rather than after. Given Secretary Christopher's announced U.S. policy on human rights, we should ensure that the process is in place first to adequately protect U.S. citizens in Mexico, but also to protect Mexican citizens themselves. The United States has moral and ethical leadership responsibilities on human rights issues, and surely we should state our expectations of nations with whom we enter into a free trade agreement quite clearly and specifically.

Today the Committee welcomes experts who are very familiar with human rights conditions in Mexico. Whether the issue is political freedom, the right to due process, or freedoms from egregious physical abuse and murder by those in government positions, our witnesses this morning have first-hand experience with conditions in Mexico. To begin our panel, we will hear from Mr. Carlos Salinas, Government Program Officer for Latin America and Caribbean, Amnesty International; Mr. Javier Livas Cantu, Member of P.A.N, the opposition party to P.R.I; Juan Mendez, Executive Director, America's Watch; Mr. Juan Manuel Arrigunaga, Coordinator for the Families' Civic Front in Merida, Yucatan; and Eric Rosenthal, Legal Fellow at Minnesota Advocates for Human Rights. I would like to point out that in addition to having a U.S. citizen on the panel, we have two Mexicans, a Chilean, and an Argentinian. I also understand that Mr. Arrigunaga was in Washington last week to present a petition to the Organization of American States, returned home and came back to Washington for this hearing, so we thank you for your extra effort to be here. Mr. Salinas, we will begin with you.

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# COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1992

## R E P O R T

SUBMITTED TO THE

COMMITTEE ON FOREIGN RELATIONS  
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AND THE

COMMITTEE ON FOREIGN AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

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## MEXICO

Mexico is a federal republic with a President, a bicameral legislature and a constitutionally independent judiciary. The Institutional Revolutionary Party (PRI) has dominated the Government since its founding in 1929. Following political reforms in recent years, the opposition expanded its stake in the political system. Opposition parties currently hold a significant number of seats in the Chamber of Deputies, three major governorships, and numerous mayoralties, reflecting progress achieved by the Salinas Administration toward a fairer electoral process. Nevertheless, the PRI maintains predominant political control through a combination of voting strength, organizational power, access to governmental resources not enjoyed by other political parties, and—according to credible charges from the principal opposition parties and other observers—electoral irregularities.

In 1992 elections were held for 11 governorships, as well as many state legislatures and municipal governments. Despite opposition gains, including winning the governorship of Chihuahua and control of that state's Congress, many respected nonpartisan observers, both domestic and international, cited a variety of actions, including electoral fraud, by election authorities and PRI supporters in several states that they charged had distorted the electoral process. The election proceedings were seriously contested in four states. In the races for governor in Durango, Tamaulipas, and Sinaloa, electoral tribunals rejected opposition complaints that the elections were unfair, and the PRI candidates took office. In Michoacan, which has traditionally been plagued by violence on both sides, protests continued long after the elections, and the elected PRI governor eventually requested a year's leave of absence, which was tantamount to resignation.

Mexican security forces include Federal and State Judicial Police, specialized forces such as Mexico City's Traffic Police, the Federal Highway Police, local police, and the military. Mexican military expenditures represent a small share of the overall national budget. According to the U.S. Arms Control and Disarmament Agency,



total military expenditures for 1989 were \$875 million. Despite an increasing role in counternarcotics operations for the military, the defense budget has remained at the same level. Although the Salinas Administration has made some progress in controlling abuses, members of the Federal and State Judicial Police continue to be responsible for many human rights abuses.

Mexico has a mixed economy that combines domestic market capitalism with some state ownership of major industries. The Government's economic reform program has been very successful in reducing inflation, promoting growth, and restoring economic confidence. Negotiations were concluded for a free trade agreement with Canada and the United States that is awaiting legislative approval. Growing confidence in Mexico has led to increased foreign investment.

A wide range of individual freedoms is provided for by the Mexican Constitution and honored in practice, but there continue to be human rights abuses in Mexico, many of which go unpunished, owing to the culture of impunity that has traditionally surrounded human rights violators. These violations include the use of torture and other abuses by elements of the security forces, instances of extrajudicial killing, and credible charges by opposition parties, civic groups, and outside observers that there are flaws in the electoral process. Police brutality is widespread in Mexico. According to the National Human Rights Commission (CNDH), however, as well as state and local human rights advocates, allegations of such abuse declined in 1992. This decline reflects the work of government and nongovernmental human rights agencies and a commitment by the Salinas Administration to prosecute offenders. The Mexican Government established the CNDH in 1990 to investigate human rights violations, and the Salinas Administration has given substantial support to it. Through November 1992, 588 police and other public employees had been disciplined as a result of CNDH investigations into human rights-related complaints. Of these, criminal charges were brought against 246 employees, and investigations were still pending in 141 cases. The CNDH was also largely responsible for the Government's early release of 500 indigenous people from prisons during 1992.

#### RESPECT FOR HUMAN RIGHTS

##### *Section 1. Respect for the Integrity of the Person, Including Freedom from*

*a. Political and Other Extrajudicial Killing.*—Several political and human rights activists were killed in 1992. As in previous years, the identities and motives of the perpetrators often have not been established conclusively, but a number of the killings may have been politically motivated. The most notable was the November slaying in Mexico City of Quintana Roo journalist Ignacio Mendoza Castillo. Mendoza was slain the day after he had visited the CNDH to denounce threats against himself and other Quintana Roo journalists. While a police investigation concluded on November 29 that Mendoza had been shot by one of his private business debtors, whom he was threatening to foreclose, the CNDH is also investigating the Mendoza slaying. The Commission reported on December 16 that, while preliminary review suggested the Mendoza killer had been identified, it would not close its investigation until it had finished examining the Attorney General's report.

Most public attention in 1992, however, remained focused on murders that occurred in earlier years, including the 1991 murder of physician and journalist Victor Manuel Oropeza and the 1990 killing of lawyer and prominent human rights worker Norma Corona. Former Mexican Federal Judicial Police (MFJP) Commander Mario Alberto Gonzalez Trevino, accused of planning the 1990 murder of Corona, remains under arrest, and the trial against him is proceeding. On July 14, 1992, Miguel Angel Rico Urrea, a principal witness for the prosecution, was fatally shot in prison, and there is strong evidence linking his murder to Gonzalez Trevino. He is the fourth prosecution witness killed in the Corona case.

In another earlier case involving police, the CNDH concluded its investigation into the deaths of three Quijano brothers at the hands of police in January 1990. Its report was sharply critical of the Attorney General's investigation of the case, noting that the evidence implicated several MFJP agents, and hinting that the physical evidence suggested attempts at a coverup. Arrest warrants were issued against five MFJP agents involved, but only one had been served as of December 1992. Investigations also continue into the death of Victor Oropeza and the 1988 killings of the two aides to Party of the Democratic Revolution (PRD) leader Cuauhtemoc Cardenas. New special prosecutors were appointed in both cases but, as of December 1992, had not resolved either.

Five PRI supporters in Michoacan were killed by persons unknown in violence related to the July 12 election. Complaints have been filed with the CNDH in these

and other cases denounced by the PRD as politically motivated killings, and investigations continue into the killings.

There continue to be cases of extrajudicial killing by police. There are also repeated allegations of involvement by judicial police agents in narcotics-related killings. At least one judicial policeman has been charged with providing protection to drug traffickers involved in a November shootout in Puerto Vallarta that left at least six persons dead. In September nine persons were kidnaped in Mexico City, tortured, and killed. While their murders were attributed to a conflict between drug gangs, the murderers have not been identified. In addition, "madrinas"—civilians unofficially recruited by police—continue to be accused by human rights monitors of human rights abuses.

In Mexico's rural states, violent disputes over land sometimes result in extrajudicial killings. Paramilitary bands, "madrinas," and local police controlled by political bosses and landowners have threatened and sometimes killed peasant activists. In one instance, a local policeman in Trinidad Yaveo was charged with homicide and is now a fugitive after he killed a man in the course of a police-led eviction of a group from a parcel of land, the title to which was contested.

On July 12, the leader of Mexico City's AIDS movement and two homosexual men were tortured and murdered. At least four other antigay murders took place in Mexico City during the year, and a number were reported in the state of Chiapas. Gay groups accused the police of releasing inflammatory information to the press and of failing to investigate these murders vigorously. At year's end, no one had been arrested and the police reported that they had no suspects.

The U.S. Government formally protested and sought investigations of two instances when U.S. citizens died while in police custody, allegedly by suicide.

With the establishment of the CNDH as an independent entity under the Constitution, and with the formation of official Human Rights Commissions in each state, there has been increased attention paid to human rights at both the state and federal levels. However, many of the CNDH recommendations have been implemented only partially.

**b. Disappearance.**—Unlike previous years, there was no evidence in 1992 that human rights workers, journalists, or political activists disappeared for political motives.

In 1992 the CNDH opened 53 new investigations of reported disappearances and continued working on the more than 270 investigations already under way. During calendar year 1992, the CNDH concluded 20 cases. Of the 20, 12 were found not to be genuine disappearances. The remaining 8 involved murders, and CNDH investigations continue in 6 of these cases. There is a suspect in one murder case, and in another the murderer has been convicted. None of the resolved murders were found to be motivated by political considerations.

With the 20 cases resolved in 1992, the CNDH concluded 60 disappearance cases. Many of these were undertaken as part of a joint program with the Mexican Office of the Attorney General (PGR) to resolve all of the cases in Mexico listed by the U.N. Working Group on Involuntary or Forced Disappearances. (The U.N. list contains a total of more than 200 persons who reportedly disappeared in Mexico over the last 22 years. Mexican independent human rights groups continue to claim that approximately 500 persons disappeared in Mexico over the same period.) The joint CNDH/PGR program ended on June 1, 1992; CNDH officials will continue investigating the remaining cases on their own.

While some nongovernmental human rights activists assert that there were political motives behind many disappearances, the Commission found evidence of a political motive in only one of the disappearance cases it investigated, that of Jose Ramon Garcia Gomez, a political activist who disappeared in Morelos in 1988. The Commission issued two recommendations in the case. Several suspects in Garcia Gomez' disappearance, including former police officials, were arrested on criminal charges while another, the former state police chief, is being sought. "Amparos" (judicial orders that quashed the arrest warrants) were issued, and the prosecution was forced to appeal in at least two cases.

**c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.**—Torture is prohibited by the Constitution. However, police agents continue to employ psychological and physical torture. The most commonly used methods of torture include threats, beatings, asphyxiation, and electric shock. In its first two years, the CNDH received 736 complaints of torture. According to the CNDH, torture complaints declined sharply during 1992 both in number and as a percentage of all complaints. The Commission received 292 such complaints from December 1991 to December 1992, compared with 422 in the previous year. As a result of the CNDH recommendations issued up to December for complaints concerning torture, the Government brought criminal charges against 16 public officials. Although this rep-



resents an improvement, it continues a pattern of failure to try, convict, and sentence to prison police officials guilty of abusing detainees. Despite the decline in torture complaints to the Commission, some nongovernmental human rights monitors assert that there has been little decline in the number of such complaints which they receive.

Through the beginning of September, 41 U.S. citizens complained of police abuse, a decline of 19 from the same period in 1991, and of 56 from that period in 1990. In the 30 cases where victims were able to identify those involved, Federal Judicial Police agents were implicated in less than one-third, down from earlier years, while state, local, and other federal agency officials accounted for the rest. By year's end, the U.S. Government had formally protested 16 cases of torture or other mistreatment through diplomatic channels, down from 27 such protests during 1991 and 43 in 1990.

According to the Mexican Attorney General's reports, PGR investigations undertaken in response to U.S. protests in 1992 resulted in 2 dismissals, 49 suspensions, 26 reprimands, and two other unspecified punishments of officials found to have been involved in the mistreatment of U.S. citizens. In response to CNDH recommendations and investigations, the Government continued efforts begun in 1990 to reduce the incidence of torture and similar abuse by officials.

The federal rules of evidence were amended in February 1991, in response to frequent criticism that confessions are coerced in the period before defendants appear before a judge and are assigned a lawyer. Confessions are now inadmissible unless given before a judge or a Public Ministry official and in the presence of defense counsel or a person in whom the accused has confidence. Similar changes were adopted by several states. Although the new rule is credited by the CNDH and independent human rights activists as partly responsible for the apparent decline in the incidence of torture in 1992, some human rights groups argued that torture is still widespread and that the new rule does not go far enough. They asserted that only confessions before judges should be accepted and that the safeguards in the current law are inadequate.

Most prisons in Mexico are overcrowded and lack adequate facilities for the prisoners. Overcrowding remains a problem despite an early release program pushed by the CNDH and legal reforms reducing the number of crimes that carry mandatory prison sentences. In addition, an entrenched system of corruption has undermined prison authority and led to abuses. Frequently, prisoners exercise authority within the prison, displacing prison officials. One particularly egregious case involved a prison in Nayarit whose warden was fired after a long string of abuses at the prison ended in the unexplained death of a prisoner who reportedly had been summoned to the warden's office. Conflicts between rival prison groups, often involved in drug-trafficking, continued to spark violent confrontations. While prison officials have been prosecuted for abusing prisoners, they usually were charged with only minor offenses and have avoided serious punishment. The CNDH and Government have embarked on a major prison building program designed to reduce the overcrowding, lack of security, and the mixing of male and female prisoners and of accused and sentenced criminals that have added greatly to prison violence.

**d. Arbitrary Arrest, Detention, or Exile.**—The Constitution requires that those arrested be brought before an officer of the court as soon as possible, generally accepted as within 24 hours of their arrest. That person takes their statement and informs them of the charges against them. A prisoner must be arraigned before a judge and found by that judge to have probably committed a crime, if the prisoner is to be held more than 72 hours from the time when he was charged by an officer of the court. Failure to observe the deadline is a violation of the law and prisoners can file an "amparo" petition (similar to filing for *habeas corpus*) requesting immediate release if the time limits are not met. However, police and judges often fail to meet these constitutional and procedural deadlines.

Incidents of arbitrary arrest and imprisonment occur frequently: CNDH figures show that illegal deprivation of liberty is the most common complaint among its human rights cases. From June 1990 to June 1992, out of 10,244 complaints received by the CNDH, 826 alleged arbitrary detention. In one case, a young PRD political activist, Morelos Madrigal Luchino, was kidnapped by unknown persons dressed as policemen, held incommunicado for more than 3 days, and beaten before being released.

Generally, arrests may be made only upon authority of a judicially issued warrant. The law permits suspects caught in the act of committing a crime to be arrested without a warrant. It has been frequent police practice to arrest a suspect without a warrant even when not caught in the act and for judges to overlook the irregularity. That practice has only recently begun to abate with the dismissal of several cases based on improper arrests. In order for the protection against arbi



trary arrest to be given full effect, human rights advocates assert that defense counsel must regularly raise the issue and judges must be prepared to recognize it.

Frequent credible reports continue to be made of human rights violations, including forced expulsions and unlawful arrests, in connection with conflicts in rural areas. These incidents often involve indigenous people evicted by landowners with local police and government support. In September 1991, a group of indigenous protesters and a Catholic priest were arrested by police during a protest in Palenque, Chiapas. After reportedly suffering beatings and other hardships, most were not charged and were released within several days. Several others were held for more than a month, and one for more than three months, before being released on suspended charges, the equivalent of receiving a pardon.

Exile of Mexican citizens is not normally practiced.

c. *Denial of Fair Public Trial.*—The Mexican judicial system is divided into federal and state court systems, with the federal courts having jurisdiction over most civil cases and those involving major felonies, including drug trafficking. The political opposition and many credible, independent analysts charge that, because judges' appointments must be renewed once before they are given tenure, the judiciary is overly dependent on the executive branch. The Government, in turn, denies that political beliefs have any bearing on the impartial administration of justice. Factors such as low pay and high caseloads contribute to continued corruption within the judicial system.

The Constitution requires that the court must hand down a verdict within 4 months of arrest for crimes that carry a maximum sentence of 2 years or less, and within a year for those with longer maximum sentences. The trial itself, sentencing, and appeals can delay the imposition of a criminal sentence for significant periods of time, sometimes adding a year or more to the entire process. Trial is by a judge, not a jury, in nearly all criminal cases. Defendants have a right to counsel, and public defenders are available. Other rights include protection against self-incrimination, the right to confront one's accusers, the right to a translator if one's native language is not Spanish, and the right to a public trial. Such protections are not always observed in practice. More attention has been paid to ensuring prompt arraignments of current suspects, although unlawful detention remains a widespread problem. The long trial process is one of the major causes of overcrowding in the prison system, as those who do not qualify for or cannot make bail swell the prison population.

A coalition of nongovernmental human rights groups called for an amnesty for many indigenous prisoners who, it is charged, are political prisoners denied access to fair trials because of language and cultural barriers, as well as poverty. The CNDH launched a program to seek early release for prisoners, including indigenous people, and to improve compliance by federal and state officials with legal requirements that indigenous people be represented fairly. The Government denies charges by human rights groups that many indigenous people are wrongly imprisoned, but it has released more than 500 in 1992 as part of the CNDH-sponsored early release program.

After disputed November elections in the state of Tamaulipas ended in protests, several opposition leaders were imprisoned and charged with committing acts of violence. Most were released, and charges against them were dismissed within 3 weeks of their arrests, but charges remained pending against several at year's end. The opposition claims that these leaders were falsely arrested for political reasons. While the National Front Against Repression (FNCR) stopped keeping a log of those it considers political prisoners, some observers continue to assert that there are political prisoners in Mexico, though the number continues to decline from the 33 reported by the FNCR in 1989. Historically, the FNCR claimed that most political prisoners in Mexico were peasants and peasant activists arrested in land disputes. The Government disputes the appellation "political prisoner," charging that most of those whom human rights groups claim to be political prisoners have been guilty of crimes such as terrorism, criminal association, and damage to property.

f. *Arbitrary Interference with Privacy, Family, Home, or Correspondence.*—Privacy and freedom from intrusion by the Government into homes, family, and correspondence are rights protected under Article 16 of the Constitution. Although search warrants are required by law, unlawful searches occur frequently in Mexico. Wiretaps placed in violation of the law were found in a meeting room in Morelia, Michoacan, that was to be used by the opposition National Action Party (PAN) central committee. No convictions resulted from the ensuing investigation, and the Government denied any official involvement. Shortly afterward, however, the local representative of the Mexican National Security Agency stepped down, a move interpreted by opposition leaders as a result of the investigation of the incident.

Peasants and urban squatters involved in conflicts over land charged that local landowners, with the compliance of local political leaders and often accompanied by police or bands of civilian thugs, evicted them from their homes without appropriate judicial orders, often with violence. In Chiapas, according to the CNDH and other credible reports, local village leaders expelled from their villages indigenous people who converted from their traditional religion to evangelical faiths. Efforts by the state government supported by the Catholic hierarchy have not been successful in ending the expulsions, largely because the Catholic hierarchy has little influence in some nominally Catholic Indian communities, and because the Government found it difficult to force reintegration into small communities of people who have been ostracized for their beliefs.

## *Section 2. Respect for Civil Liberties, Including*

a. *Freedom of Speech and Press.*—Freedom of speech and of the press are provided for by the Constitution. Opposition leaders freely voice their criticism of the Government, and there are a large number of newspapers and magazines with a wide range of editorial views. However, there are significant restrictions on these freedoms.

The Government's control of a significant advertising budget and its ability to reward favored journalists by providing them access enabled it to use that leverage to discourage unfavorable reports. Also, a number of journalists depend upon receipt of under-the-table payments from the often public entities they cover to supplement low wages. But at least one newspaper revised its wage and advertising revenue distribution policies to reduce or eliminate abuses. Recently, the Government announced that it would no longer cover expenses incurred by reporters accompanying the President on his travels abroad. Plans to privatize two of three remaining government-owned television stations and the government-owned newspaper *El Nacional* had not been carried out by December. After the planned sales are completed, the Government would retain control of an educational television station and another, cultural station will continue to be run with government funding by an independent board headed by leading intellectuals.

The Federal Electoral Code provides opposition parties during an electoral campaign with 15 minutes per month of television time and additional time in proportion to their electoral strength. Despite that provision, the opposition asserts that media coverage is unbalanced and argues that campaign media spending should be controlled. Opposition political parties and independent observers charge that Mexico's two principal television networks, one government owned and the other privately owned, accord the government party inordinate news coverage, particularly at election time.

Violence and threats against journalists continued to be a serious problem in 1992. In the Yucatan, unidentified persons vandalized the offices of a publisher of a newspaper; he received a package bomb shortly after calling for an investigation into the violent eviction by police of protesters from the main town square. The police identified no suspects. As already noted, the death in July 1991 of physician and columnist Victor Manuel Oropeza Contreras remains unresolved. Two suspects charged with the murder were released in 1992 in compliance with a recommendation from CNDH, and charges are now pending against several police officials accused of fabricating a case against the two. A new prosecutor was named to lead the case in September.

The first stage of a CNDH study of attacks on journalists concluded in 1992, and a second was begun. In response to a complaint by the Union of Democratic Journalists, the Commission began an inquiry in 1990 into 55 cases of alleged denial of human rights to journalists. In December 1992, the CNDH updated its report on that first stage and announced that it had embarked on a second stage, investigating 22 new cases. Of the 55 original cases, 40 were concluded and police investigations pursuant to Commission recommendations continue in the remaining 15. Of those 40 concluded, 12 were dropped from the study as not involving journalists or after a finding that the incident involved a private dispute. The murderers have been convicted in 10 cases, trials are pending against private suspects in 3 cases (including the murders of Manuel Buendia and Javier Juarez Vazquez), and suspects have been identified in 2 others. Five were dismissed after findings of not guilty, two private citizens accused of murder were acquitted for acting in self-defense, six cases were archived for lack of evidence, and one policeman was convicted of battery. In none of the cases did the CNDH establish evidence of a political motive. One of the cases, that of Hector Felix, was closed after two men (not public servants) were convicted of murdering him and sentenced to terms of 26 and 27 years. Later, the case was reopened to consider new evidence that others were in-



volved. Six killers involved in the 1986 murder of PAN journalist Linda Hejearano were sentenced to 25- to 27-year terms.

b. *Freedom of Peaceful Assembly and Association.*—The Constitution grants the right of peaceful assembly for any lawful purpose. A government permit is generally required for major demonstrations. The Government, with few exceptions, permits demonstrations by a broad range of political groups.

c. *Freedom of Religion.*—The Constitution permits persons to practice the religion of their choice. In January a constitutional amendment was adopted that transformed the legal relationship between church and state in Mexico. Applicable to all faiths, the amendment permits religious entities to acquire legal standing and authorizes them to own property and to run private schools. It permits clergy to vote and wear religious garb in public. These had been illegal since the passing of antichurch laws in the late 1920's but tolerated in practice. The clergy remain barred from holding public office and advocating partisan political positions. Legislation implementing the constitutional change restricts the rights of churches to own businesses and communications media and sets rules for acquiring legal status as a religious association. Individual clergy may be political candidates, but only after a period of separation from their religious roles.

d. *Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation.*—Movement within and outside the country is unrestricted. The Government has customarily admitted persons recognized as refugees by the U.N. High Commissioner for Refugees. Approximately 43,000 Guatemalan refugees reside in camps and resettlement areas in three southern Mexican states. Since 1990 they have been permitted to accept work outside their camps and may travel freely in the five-state area of Chiapas, Campeche, Quintana Roo, Tabasco, and Yucatán. The Government estimates that an additional 400,000 Central Americans, mostly Guatemalans and Salvadorans, are living and working in Mexico. These pre-1990 undocumented Central Americans lead a precarious existence, are subject to deportation when caught, and are often exploited as a source of cheap labor. Changes in the 1991 Mexican law governing refugee status did not have a measurable impact on the pre-1990 population of Central American immigrants in Mexico.

### *Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government*

Since 1929, Mexico's Government has been controlled by the PRI, which has won every presidential race and every gubernatorial race except the 1989 Baja California Norte election and the 1992 Chihuahua election. (The third opposition governorship, that of Guanajuato, was an interim appointment by President Salinas in 1991.) To maintain power, the PRI has relied on extensive public patronage, the use of government and party organizational resources, and, according to respected independent observers, electoral fraud.

Eleven governors were selected in 1992, and elections were held for several state legislatures and numerous municipal governments. The most hotly contested races were in the states of Chihuahua and Michoacán. In Chihuahua, the National Action Party candidate won the election in a tight, but apparently clean, election that contrasted sharply with elections in the state 6 years ago when the PAN claimed that its victory was stolen. The Government was responsive to opposition complaints of irregularities before the election, replacing PRI candidates who did not fulfill residency requirements and arresting two government officials who were caught illegally possessing voting credentials. The PAN candidate's clear victory was accepted by the PRI the day after the election.

In contrast to the election in Chihuahua, the Michoacán gubernatorial and state Congress election was dominated by controversy and by allegations of fraud, some of which were credible. Even before election day, the PRD accused the PRI and the Government of massive, unfair campaign spending; denying PRI sympathizers the right to vote by removing their names from the official list of voters or not providing them voter credentials; and attacking the election oversight organs with PRI supporters. After the PRI was declared the winner in the gubernatorial and 17 of 18 congressional races, the opposition filed dozens of formal complaints with the state election tribunal, challenging the results from over a third of the voting precincts. However, the state electoral tribunal dismissed all the complaints in a pro forma manner. Moreover, the state electoral college convened secretly—without inviting PRD congressmen—to ratify the PRI candidate's gubernatorial victory, and the congressional electoral college ratified the legislative elections despite lacking a quorum as stipulated by the state electoral law. Because their demands were not met through the legal review process, the PRD took their complaints to the street, resulting in extensive public demonstrations throughout the state. Under continued opposition pressure, PRI governor Eduardo Villanueva announced he was taking a 1-year's



leave of absence, effectively stepping down, and an interim governor was appointed. PRD and PRI negotiators then agreed on ground rules for the December municipal elections designed to avoid a repetition of the gubernatorial race protests. The plan included choosing local election officials by agreement, equal access to the media, and spending restraints. Nonetheless, the PRD also lodged protests in the aftermath of the December 6 municipal elections in Michoacan, claiming irregularities occurred in over 24 municipalities.

Credible allegations of election fraud were also made in several other state elections, notably in Durango, Veracruz, and Tamaulipas. In Durango, the PAN complained of illegal pressure on voters to support the PRI. In Veracruz, the PRD said the PRI padded its victory margin, and in Tamaulipas, the opposition coalition candidate denounced the failure of electoral review panels to consider opposition objections. Most observers agreed that such irregularities did not affect the outcomes in these elections.

The electoral process is still heavily weighted in favor of the PRI; nevertheless, in recent years there have been improvements in the federal electoral law, COFIPE. Passed in 1990, COFIPE introduced several changes into the electoral process, including the complete renovation of the official list of voters and distribution of over 36 million voting credentials to eligible voters. COFIPE also strengthened opposition political party representation at the Federal Electoral Institute, which supervises federal elections, and created a Federal Electoral Tribunal (TFE), an autonomous oversight commission that rules on electoral-related disputes.

Many Mexicans do not have confidence that government electoral oversight and review organs will act impartially. Consequently, nongovernmental human rights organizations and civic and academic groups have taken it upon themselves to serve as independent electoral watchdogs. For example, during the Chihuahua gubernatorial elections, the Council for Democracy, a loosely aligned group of academics, journalists, and politicians, organized a "quick count" of the vote results in the state; its results mirrored the official results. Teams of citizen observer groups also fanned out into several states during the year to serve as independent election monitors.

Despite improvements, the opposition and independent observers continued to assert that the laws do not ensure fair elections. The opposition's strongest criticism continued to be the charge that the official lists of state voters were manipulated by inflating the number of PRI voters, removing the names of opposition supporters, or not delivering voting credentials to them. Opposition allegations of electoral errors were bolstered by the Government's failure to report election results on time and its inability to deliver credentials to everyone who met the registration requirements. The Government responded to opposition pressure by agreeing to discard the existing official voter list, which was only used in one federal election, to compile a new official list of voters, and to issue new voter credentials which for the first time will have a photograph of the holder. These credentials will be used in the 1994 presidential election.

Opposition and independent observers also lodged credible complaints that the Government used public resources to support campaigns of PRI candidates and frequently used patronage, particularly in the form of the Government's social services and development program—the National Solidarity Program (PRONASOL)—for partisan political advantage. In hotly contested elections during the past year, the PRI spent millions of dollars on the campaign, sometimes outspending the opposition by as much as 30 to 1. While this is not illegal in Mexico—Mexico does not have laws regulating campaign spending—critics charge that this imbalance has worked against growing democratic pluralism. President Salinas announced in his November 1 State of the Union speech an initiative to limit campaign spending, advance the impartiality of electoral authorities, ensure separation between the government and the parties, and ensure equal access to the media. The PRI has already begun to obtain alternative financing through public fundraising, but it remains to be seen how fully these initiatives will be implemented.

Under Mexican law, indigenous peoples have the same political rights as all other Mexican citizens. They do not live on independently governed reservations, although many indigenous communities continue to exercise considerable local control over economic and social issues. These communities continue to apply their traditional law to resolve a variety of disputes, including allegations of crimes.

While there is no separate indigenous political party in Mexico, in many states—particularly Chiapas, Oaxaca, and Guerrero—indigenous voters make up an important percentage of the populations. Traditionally, indigenous voters strongly backed the ruling PRI. In return for this support, in many areas the Government permitted the local autonomy noted above. Opposition politicians and human rights advocates stepped up their criticism of elections in indigenous areas, arguing that the reported

results often reflect distortion of the voting process and not a genuine consensus to support the PRI.

#### *Section 4. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights*

The Government permits both domestic and international human rights groups to operate in Mexico without restrictions or harassment. However, human rights monitors continued to be subject to threats, which must be taken seriously since activists in past years were subjected to violence and in some cases killed. In October and November, well-known human rights advocate Teresa Jardi received five death threat letters, urging her to leave Mexico. She met with President Salinas, who lauded her work, denounced the threats, and set in train an investigation into the threats. Together with the killing of Quintana Roo journalist Ignacio Mendoza (mentioned above), the Jardi threats were the most serious attack on human rights monitors in 1992.

Ranking Mexican officials routinely meet with domestic and international human rights activists to discuss human rights problems. In June 1990, President Salinas established the semiautonomous National Commission on Human Rights and appointed respected jurist Jorge Carpizo Macgregor as its president. In January 1992, constitutional reforms took effect making the CNDH legally independent. The Commission's advisory council is composed of respected human rights leaders, and Dr. Carpizo has received strong support from President Salinas for CNDH efforts.

The Commission's mandate, however, does not provide it jurisdiction over labor or electoral matters, nor does it have prosecutorial powers. The CNDH, which calls itself an ombudsman, must rely upon the pressure of public opinion and the accuracy of its investigations to induce compliance with its recommendations to state and federal authorities to investigate and prosecute transgressors. Since announcing in June 1992 that too many of its recommendations had been only partially completed, the CNDH has pursued an aggressive campaign to force compliance. In its reports for 1992, the Commission noted that of the 412 recommendations it has issued since it began work in June 1990, 160 have been accepted and fully complied with, 228 accepted but not yet fully implemented (106 of which were issued in the last 6 months), and only 8 had not been accepted by the authorities to which they were addressed. Human rights activists claim that the Government of Mexico should take concrete steps to ensure that public officials who are accused of human rights violations are prosecuted and not transferred to another jurisdiction, or dismissed in one and then rehired in another. The Government has publicly recognized this problem and has announced its plans to develop a national register of police to confront it.

There are more than 90 nongovernmental human rights organizations active in Mexico. In addition to assisting individual victims of human rights abuse, such organizations have become increasingly active in monitoring elections. Recognizing the advances by the CNDH in the protection of human rights, they decry its lack of jurisdiction in electoral matters and have moved to fill that gap. Their leaders assert that ensuring fair and free elections is the best way to improve the administration of justice and to ensure that human rights violators are prosecuted. Under the constitutional change making the CNDH independent, state human rights commissions will be created by legislation in all 31 states. These entities will handle matters arising under state law, although the National Commission will continue to have review authority.

#### *Section 5. Discrimination Based on Race, Sex, Religion, Language, or Social Status*

Mexico takes pride in its Spanish and indigenous origins and in the success the country has achieved in fostering a climate of racial harmony. Indigenous groups, many of which do not speak Spanish, are encouraged to participate in political life, and the Government is respectful of their desire to retain elements of their traditional lifestyle. However, these groups remain largely outside the country's political and economic mainstream, a result not of overt governmental discrimination but rather of longstanding patterns of economic and social development. Reform this year of the Mexican Constitution's provision on agriculture, which resulted in the announcement that there is no remaining open land free to be distributed to peasants through government expropriation or grant, may make it more difficult for Indian groups to acquire new land and may increase pressure on those with good lands to sell. As noted earlier, human rights groups continue to complain with some justification that indigenous defendants in criminal cases are not treated fairly, despite the 1991 amendment to federal law requiring an interpreter at every stage of a criminal proceeding for indigenous peoples not fluent in Spanish.



Historically, women in Mexico have played a subordinate role, economically, politically, and socially. Women are becoming increasingly active economically and politically; one woman is a member of President Salinas' Cabinet, another holds the number two position in the PRI, and others are key congressional and union leaders. Legally, women are equal to men. They have the right to file for separation and divorce and to own property in their own name. The Constitution provides for equal pay for equal work and for maternity leave.

Domestic assault is a crime, but in practice—largely due to social tradition—women are often reluctant to file reports of abuse or to press charges. Police are reluctant to intervene in what is often considered a domestic affair. The CNDH has included programs and publications on women's rights in its training and education campaign, and the Center Against Violence Toward Women (COVAC) has worked to encourage rape victims to come forward and report sexual crimes. Encouraged by the 1991 changes in the law defining rape, stiffening sentences for offenders, and guaranteeing reparations for victims, women's groups are now seeking legislative reform of the family and civil codes regarding domestic violence and sexual harassment at the workplace.

#### *Section 6. Worker Rights*

*a. The Right of Association.*—The Constitution and specific provisions of the current Federal Labor Law (FLL) give all workers the right to form and join trade unions of their own choosing. Unions must register with the labor secretariat or equivalent state government authorities. In theory registration requirements are not onerous, involving the submission of basic information about the union in order to give it legal status. There have been repeated allegations by labor activists, however, that the federal and state labor authorities improperly use this administrative procedure to withhold registration from groups considered disruptive to government policies. Privately, trade unionists supportive of the Government and even employers say this occurs.

About 30 to 35 percent of the total Mexican work force is organized in trade unions, most of which are members of several large union confederations, known as labor centrals. Mexican unions may join together freely in labor centrals without the Government's prior approval but require registration in order to have legal status. As with union registration, there is evidence this requirement can be misapplied to function as a restriction. It took from early 1990 until September 4, 1992, for one new labor central whose members were all well established, registered trade unions, to obtain its registration. In this case, although the new central's member unions were all Labor Congress (CT) members, they had been outspokenly critical of traditional leadership of the Congress.

The largest Mexican trade union organization is the Confederation of Mexican Workers (CTM), organizationally a major supporter of the PRI. All PRI-affiliated federations, such as the CTM, and a number of autonomous unions (a total of 37 organizations) belong to the CT, a trade union coordinating body which represents approximately 85 percent of Mexico's organized workers.

The tradition of a significant presence of union officers in the Government, especially in elected positions, and the continued union influence in the nominating process for PRI candidates at all levels of government, perpetuates a symbiotic relationship that limits the freedom of action of unions. For example, union officers support government economic policies and PRI political candidates in return for having a voice in policy formation. When systemic reforms were instituted in the late 1980's, however, the mainstream labor organizations began to lose strength within the ruling PRI. After the August 1991 federal legislative elections, in which fewer than usual PRI labor candidates participated, the percentage of CT senators and deputies in the federal congress fell to less than 10 percent. In 1992, only one labor leader was named as a PRI gubernatorial candidate. This, and the reality of privatization and economic restructuring of the economy, have prompted a debate within the CT about how best to adjust to changing circumstances.

Mexican law grants workers the right to strike. The FLL requires as a first step that a 6- to 10-day strike notice be filed, followed by a brief, government-sponsored mediation effort. If a strike is ruled illegal, employees must return to work within 24 hours or face dismissal for cause. On the other hand, once a legally recognized strike occurs, by law the company (or its subunit) that is the strike target must shut down totally. Even management officials may not enter the premises until the strike is resolved.

The FLL also permits strikes by public sector employees, although this rarely occurs. Strike figures for 1992 are expected to be higher than for 1990 or 1991, mainly due to prolonged strikes within the cotton textile industry and at a large Volkswagen plant. During 1991, strike activity was low; 7,006 notices of intent to strike



were filed with the Federal Board of Conciliation and Arbitration (JFCA), and 136 actual strikes occurred. The comparable figures for 1990 were 6,395 strike notices and 149 strikes.

Labor leader Agapito Gonzalez Cavazos was arrested in January 1992 in Matamoros. He was accused of tax fraud but, since his union had just instituted legal strikes against a number of "maquiladora" (in-bond export) plants with expired labor contracts, his supporters charged harassment. Mexican government officials denied this. Due to his advanced age and health problems, Agapito Gonzalez was kept under a loose form of house arrest in a private hospital in Mexico City while government prosecutors and his own lawyers worked on his case. He was released on bond in mid-October 1992 and resumed his union activities in Matamoros.

Unions and labor centrals are free to join or affiliate with international labor organizations and do so actively.

b. *The Right to Organize and Bargain Collectively.*—The FLI, strongly upholds the right to organize and to bargain collectively. On the basis of only a small showing of interest by employees, an employer must recognize the union concerned and make arrangements either for a union recognition election or proceed immediately to negotiate a collective bargaining agreement, and such agreements are commonplace. According to the employers, FLI, bias on this point is so pronounced that it has led many of them to encourage company unionism as an alternative to organization by national or local unions affiliated with the dominant labor centrals. Union representation elections are traditionally open (not secret), and votes are recorded by name. Management as well as competing trade union officials are with the presiding JFCA official when each and every worker votes.

The public sector is almost totally organized. The degree of private sector organization varies widely by states. While most traditional industrial areas are heavily organized, states with a small industrial base usually have few unions. Workers are protected by law from antiunion discrimination, but this law is unevenly enforced, especially in states with a low degree of unionization.

The rate of unionization of maquiladora industries varies by area, but is comparatively low. The Attorney General for Human Rights of Baja California attributes the low rate of unionization of maquiladoras in his state to the fact that the relatively good wage and benefit packages of the large maquiladoras reduce the incentives to unionize. However, other observers report abject working conditions and inadequate wages in these industries and allege government as well as employer efforts to suppress unionization. There is, however, no credible evidence that the central Government has suppressed the unionization of maquiladoras. There are indicators that some state and local government figures and business leaders have discouraged unionization in their respective areas. Critics correctly point out that it is difficult to explain the low level of unionization in some states, given the ease of unionization under the law, yet the trade unions have not instituted any complaints either with the Government or with the International Labor Organization (ILO).

c. *Prohibition of Forced or Compulsory Labor.*—The Constitution prohibits forced labor. There have been no credible reports of forced labor for many years.

d. *Minimum Age for Employment of Children.*—The FLI, sets 14 as the minimum age for employment by children. Children from 14 to 15 may work a maximum of 6 hours, may not work overtime or at night, and may not be employed in jobs deemed hazardous. In the formal sector, enforcement is reasonably adequate for large and medium-size companies; it is less certain for small companies. As with employee safety and health, the worst enforcement problem is with the many very small companies. Eighty-five percent of all registered Mexican companies have 15 or less employees, and 80 percent have 5 or less employees, indicating the vast scope of the enforcement challenge just within the formal economy.

Illegal child labor is largely found in the informal economy, which includes significant numbers of underage street vendors, employees in very small businesses, and workers in rural areas. The ILO reports that approximately 18 percent of Mexican children aged 12 to 14 work. Often such children work for their parents or other close relatives. In addition, small-scale employers prepared to disregard company registration, social security, health, safety, and tax laws are often equally prepared to violate child labor laws.

In 1992 the Mexican Government increased from six to nine the minimum number of years that children must attend school. The move was part of a major educational reform effort designed, in large part, to upgrade the skills of the Mexican labor force. The Government recognizes as a long-term goal the need to continue increasing educational opportunities for youth.

e. *Acceptable Conditions of Work.*—The Constitution and the FLI, provide for a minimum wage for workers, which is set by the tripartite National Minimum Wage Commission (government, labor, employers). In December 1987, the major labor cen-

trials and unions, along with employers, agreed to a temporary tripartite accord with the Government to limit price and wage increases to compensate for purchasing power losses caused by inflation. The accord has since been renewed annually. By 1991 annual inflation was reduced to 19 percent and was expected to be about 12 percent for 1992. Wages set by collective bargaining agreements and white-collar salaries in the private sector generally kept pace with inflation even though the minimum wage has not. Since the financial collapse of 1982, the minimum wage ceased being adequate. Recent data on urban areas indicate that 14 percent of urban workers earn less than one minimum wage, 41 percent earn between one and two minimum wages, and 32 percent earn between two and five minimum wages.

The FLL sets 48 hours as the standard legal workweek. The FLL provides that workers who are asked to exceed 3 hours of overtime per day or work any overtime on 3 consecutive days must be paid triple the normal wage. For most industrial workers, especially unionized ones, the real workweek has declined to about 42 hours, although they are paid for a full 48 hours. (This is why unions jealously defend the legal ban on hourly wages in favor of daily wages.)

Mexico's legislation and rules regarding employee health and safety are relatively advanced. All employers are bound by law to observe the "General Regulations on Safety and Health in the Workplace" issued jointly by the Secretariat of Labor and Social Welfare (STPS) and the Mexican Institute of Social Security (IMSS). In addition, in late 1991 the maquiladora associations in northern border states agreed to cooperate in a special program with STPS and IMSS health and safety experts to help their member companies overcome any deficiencies in their compliance.

The focal point of standard setting and enforcement in the workplace is in FLL-mandated bipartite (management and labor) safety and health committees in the plants and offices of every company. These meet at least monthly to consider workplace safety and health needs and file copies of their minutes with federal or state labor inspectors. Government labor inspectors schedule their own activities largely in response to the findings of these workplace committees. Individual employees may also complain directly to the Office of Labor Inspection or the General Directorate of Medicine and Safety in the Workplace. Workers may remove themselves from hazardous situations without jeopardizing their employment. Complaints may be brought before the Federal Board of Conciliation and Arbitration at no cost to the plaintiff. Mexican labor and social security officials report that compliance is reasonably good by most large companies, both foreign-owned and domestic. Most compliance difficulties occur with small businesses, few of which export any goods or services.

## NICARAGUA

Nicaragua is a constitutional democracy, with executive, legislative, judicial, and electoral branches of government. President Violeta Barrios de Chamorro and members of the unicameral National Assembly were elected in a free and fair election in 1990. The Sandinista Front for National Liberation (FSLN) became, ostensibly, the opposition party in the Assembly. In the judicial branch, FSLN justices outnumber Chamorro appointees five to four on the Supreme Court, with neither group having the six-vote majority necessary to decide cases.

The Minister of Government and the President, who also holds the title of Minister of Defense, are the civilian authorities legally responsible for overseeing the National Police and Sandinista People's Army (EPS), respectively. In practice, however, Nicaragua's security forces continued in 1992 to be led by Sandinista appointees who operated with substantial autonomy. Total military expenditures for 1989, the last year for which the U.S. Arms Control and Disarmament Agency conducted a detailed analysis, were between \$76 and \$90 million. In 1992, the Government's military budget was approximately one-half that figure. The size of the armed forces was reduced from over 80,000 to under 17,000 between 1990 and 1992. Credible accusations of human rights violations were raised against the police and the EPS during the year.

In September 1992 several top police officials with poor human rights records were removed, a civilian was named to the newly created post of Vice Minister of Government to supervise the police, and an office of human rights was created within the Attorney General's office. However, the new Chief of Police, appointed from within the ranks, has also been accused of many past human rights violations. At the same time, President Chamorro created a Tripartite Commission composed of the Government, the Catholic Church, and the Organization of American States'



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TESTIMONY OF CARLOS M. SALINAS,  
GOVERNMENT PROGRAM OFFICER FOR LATIN AMERICA AND THE  
CARIBBEAN FOR THE WASHINGTON OFFICE OF AMNESTY INTERNATIONAL  
USA SECTION  
BEFORE THE  
COMMITTEE ON SMALL BUSINESS  
U.S. HOUSE OF REPRESENTATIVES

29 JUNE 1993

INTRODUCTION

Mr. Chairman, we in the United States section of Amnesty International welcome this opportunity to testify about the current human rights situation in Mexico and we welcome your continuing recognition of the importance of human rights protection. My name is Carlos Salinas and I am the Government Program Officer for Latin America and the Caribbean at the Washington Office for Amnesty International.

Whenever two or more countries come together to discuss issues, a central theme should always be the protection and promotion of human rights. Such high-level discussions have been ongoing for quite some time between the United States and Mexico due to the North American Free Trade Agreement (NAFTA) and we had hoped that the previous administration would have stressed the importance of human rights in such bilateral discussions with Mexico, a hope which we also hold for the current administration. However, the only discussions beyond trade issues have been those pertaining to labor issues and the environment. Certainly these issues are important but we have been disappointed by the lack of bilateral talks on the issue of the human rights concerns on which Amnesty works, concerns which are the foundation for any dignified and civilized society.

We note, however, that while successive administrations may not have been as vocal and as public on the issue of human rights in Mexico as we in the Amnesty US Section deem it necessary, some members of the Congress of the United States have demonstrated a strong public commitment to eradicating human rights violations in Mexico. Indeed, you, Mr. Chairman, and your Committee held a forum in September of 1991 on elections in Mexico and while electoral issues do not fall within the domain of the work of Amnesty, they are mentioned in diverse human rights treaties.

Also that Fall, the House Foreign Affairs Subcommittee

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on Western Hemisphere Affairs held hearings on recent developments in Mexico during which Chairman Torricelli declared that "systematic violations of human rights and fraudulent electoral practices in Mexico are nails in the coffin of a Free Trade Agreement." While Amnesty has no position whatsoever on NAFTA, we welcomed the centrality accorded to human rights by the chairman of that subcommittee.

In the fall of 1992, at the behest of Representatives Engel, Ravenel, and Gilman, a letter was sent to Mexican President Carlos Salinas de Gortari, co-signed by 32 other members raising the issue of torture, indigenous rights, and continuing impunity.

We elaborate on what members of the US Congress have done to make two points: one is that it is recognized that there is a serious human rights problem in Mexico, the seriousness of which is evidenced by Congressional action. The second point is that the action taken by some members of Congress is an example of what all members of Congress and the administration should be doing: expressing human rights concerns publicly. In this spirit, Mr. Chairman, we hope this hearing is a prelude to greater action on human rights by both Congress and the administration as the United States and Mexico continue their bilateral discussions.

#### HUMAN RIGHTS IN MEXICO: ONGOING CONCERNS

Amnesty International's concerns in Mexico have included the use of torture and ill-treatment, forcible "disappearances," and extra-judicial executions. In the overwhelming majority of these cases, those responsible have not been prosecuted for their crimes. For a detailed summary of ongoing concerns as well as a comprehensive list of recommendations, we would like to submit for the record our most recent report dated June 1993, Mexico: The persistence of torture and impunity.

Amnesty International continues to receive reports of torture and ill-treatment in the context of the Mexican criminal justice system from throughout the country. Amnesty has documented the persistence of torture, pointing out the failings of the administration of justice in Mexico and noting that most cases of torture occur during the investigative and prosecutorial phases of criminal proceedings. Torture and ill-treatment are used by both state and federal judicial police as a means of obtaining confessions in the context of criminal investigations although some victims - such as leaders of indigenous communities and human rights activists - may have been targeted solely for their peaceful activities.

Methods include beatings and kicks; forcible

introduction of carbonated water with chili powder into the victims nostrils (*Tehuacanazo*); semi-asphyxiation with plastic bags (*la bolsita*), forcible submersion (*pozole*), cigarette burns, electric shocks with electric prods, suspension from the wrists for prolonged periods, and food deprivation.

Amnesty has also documented extrajudicial executions for which no one has been brought to justice such as the January 1992 killing of Tomás Diego García, a Mixe Indian, during a raid of the indigenous community of La Trinidad Yaveo in the state of Oaxaca by a combined force of the preventive police, the state judicial police and local gunmen. In fact, the aforementioned letter from the US Congress raised concern about this case but to date, no one has been brought to justice. Amnesty has received reports about the killings of at least thirteen people from La Trinidad Yaveo in the last 20 years and has concluded that the failure of local and state level civilian authorities to properly investigate complaints of killings, arbitrary arrest and torture and to bring those responsible to justice means that these violations take place with the acquiescence of the authorities.

Other cases of killings for which no one has been brought to justice include the fatal stabbing of José Luis Rodríguez Morán, teacher and a union leader, in October of 1992 who had been receiving death threats due to his activities on behalf of the Triqui Indians in the state of Oaxaca; the fatal stabbing of Víctor Manuel Oropeza, journalist and human rights activist, in 1991 who had also received death threats after publishing articles accusing the police of abuses; and the shooting of the brothers Héctor, Jaime and Erik Quijano Santoyo in 1990.

In addition, Amnesty has documented abuses against indigenous communities. Arbitrary detentions and ill-treatment have often followed land disputes. Indeed, the extrajudicial execution of Tomás Diego García mentioned above was also accompanied by beatings to community members and the arrest of six Mixe and Zapotec Indians whom Amnesty designated as prisoners of conscience. A few days earlier, on 28 December 1992, over 100 Ch'ol and Tzeltal Indians and a Catholic priest were violently arrested by a combined force of members of the state judicial and security police, and subjected to arbitrary arrest, incommunicado detention, torture and ill-treatment due to a peaceful sit-in they had been staging in the town of Palenque in the state of Chiapas. October of 1992 was marked by abusive and forcible evictions of Tzotzil Indians from Campo Alegre in the state of Chiapas and the violent dispersal of a peaceful demonstration by Zoque Indians in Amatán, also in the state of Chiapas. Both of these attacks were carried out by the state judicial police.

Amnesty has also documented hundreds of "disappearances" of political activists, most of whom occurred in the 1970s and early 1980s, yet little progress has been made in clarifying their fate. This continues to be a source of great anxiety for surviving family members and friends, and the accompanying impunity afforded those responsible is also a grave affront to justice.

Finally, Amnesty continues to be concerned about prison conditions and notes that reports of torture continue to emanate from Mexican jail cells.

#### HUMAN RIGHTS IN MEXICO: GOVERNMENT REFORMS

At the heart of the matter is whether or not the numerous reforms undertaken by the administration of President Carlos Salinas de Gortari have been effective in leading Mexico to a climate of greater respect and protection of human rights. But before we talk of reforms, we must talk about the current structures that lead to human rights violations.

As mentioned above, most cases of torture occur in the context of criminal investigations by Mexican security agents. These stages of criminal investigations continue to be the exclusive responsibility of the Public Ministry, which depends on the federal or state Attorney General's office. Thus the Public Ministry has a monopoly over criminal prosecutions in Mexico: not only is it in charge of the judicial police but it also investigates and prosecutes crimes under its jurisdiction; obtains, evaluates and presents evidence before the courts; and requests that sentences be imposed. This office is also supposed to guarantee the legal rights of defendants and is responsible for criminal investigations into human rights violations, including those committed by the police under its responsibility. Here is one of the problems: the body that may be responsible for human rights violations is also the body that is supposed to investigate such cases.

Mexican legal protections of human rights are not a new phenomenon. They, in fact, date back to the 1917 constitution which contains several articles for human rights protection such as stipulations that no arrest shall be made without a warrant issued by a competent judicial authority except when caught in the act of committing a crime (*flagrante delicto*); protection against self-incrimination; prohibition of all forms of ill-treatment during detention; stipulation that all detainees must be brought before a judge within 24 hours of arrest; and guarantees for the right of detainees to legal counsel from the moment of arrest. The widespread disregard of these protections coupled with national outcry and international



scrutiny has led to continued attempts at legislative and institutional reforms.

These legislative and administrative reform have often been accompanied by public declarations by Mexican officials expressing their commitment to improving the condition of human rights in Mexico. In mid-1989, for example, several months after the establishment of the General Human Rights Directorate, the Federal Attorney General promised a full investigation into allegations of involvement in the use of torture by federal judicial police agents and promised that the full weight of the law would be brought against anyone found guilty. In January of 1990, the Federal District Attorney General insisted that convictions could no longer be based on extrajudicial confessions alone and that detainees must receive medical examinations before and after interrogation. Statements such as these are indeed positive in that they can reinforce the attempts at reform. But both statements and reforms, whether legal or institutional, must be accompanied by the political will to carry them through. It is our view that attempts at reform have not been matched by the necessary political will to stem the abuses.

#### THE FEDERAL LAW TO PREVENT AND PUNISH TORTURE AND THE GENERAL HUMAN RIGHTS DIRECTORATE

The inadequacies of constitutional guarantees in preventing torture and other human rights abuse, and increasing reports of these abuses led to creation of the Federal Law to Prevent and Punish Torture in 1986. This law defined torture as a crime for which prosecution is mandatory, establishing a penalty of up to eight years imprisonment for law enforcement agents found guilty of torture as well as dismissal from duty for double the time of the prison sentence. It also specified that torture cannot be justified under any circumstance. The law also included provisions for the recognition of detainees' rights to proper medical care by a doctor of choice on request and the prohibition of the use in legal proceedings of evidence obtained through torture.

In an attempt to reinforce this legal reform, the administration of President Carlos Salinas de Gortari established the General Human Rights Directorate within the Interior Ministry in 1989. Its purpose was to receive complaints of human rights abuses and make recommendations for their investigation and prevention to the relevant authorities. The directorate criticized the use of confessions taken by the police as primary or sole evidence against defendants because of the risk that the confessions might have been obtained through coercion, echoing what human rights groups had been saying all along.

Yet despite these new laws and structures in the mid to

late eighties designed to curb human rights abuses, the new laws, as well as the relevant provisions of the 1917 constitution, continued to be violated. Furthermore, to this date, despite hundreds of complaints of torture, not a single government official has been sentenced under the 1986 law. The case of Manuel Manríquez San Agustín illustrates this breakdown. On 2 June 1990, Manríquez was arrested without warrant by the Federal District Judicial police in Mexico City and was held incommunicado for four days in violation of provisions of the 1917 constitution prohibiting incommunicado detention and mandating that detainees be brought before a judge within twenty four hours of arrest. Unable to speak Spanish at the time of his arrest, Manríquez was tortured with beatings, near asphyxiation, burns and electric shocks, and was forced to sign papers he could not understand. This "signed confession" was used to both charge and convict Manríquez of murder despite the lack of supporting evidence and certification by a prison doctor that physical evidence of torture existed. Manríquez was sentenced to twenty-four years' imprisonment and is currently in prison. This is only an illustration of the shortcomings of the 1986 law: the law itself, the paper protection, if enforced would curb human rights violations, the problem is that it is not enforced.

#### THE NATIONAL HUMAN RIGHTS COMMISSION

The public uproar and international attention that followed the murder of Norma Corona Sapién, a human rights lawyer, prompted further government action. Ms. Corona had been investigating the alleged participation of federal judicial police agents in the reported torture and killing of three Venezuelan teachers and a Mexican lawyer and as a result had been receiving repeated death threats. She was shot dead by unidentified gunmen on 21 May 1990. In response, President Salinas established the National Human Rights Commission in June 1990. Part of the Interior Ministry, it incorporated the General Human Rights Directorate and was designed to receive and investigate complaints of human rights abuses and make recommendations for action based on its findings to relevant authorities. The Commission is also responsible for human rights promotion and education, the proposal of a national policy for the respect and defense of human rights and the presentation of this policy nationally and internationally.

During its first two years of operation, the Commission received 10,244 complaints of alleged human rights abuses and issued only 269 recommendations based on 235 cases. Perhaps even more significant is the fact that 136 of those recommendations have not been fully complied with. Furthermore, there is evidence which suggests that 136 underestimates the number of cases in which the recommendations of the Commission have been either partially

or totally disregarded. These cases include:

-The aforementioned case of Pablo Molinet Aguilar. A complaint on his behalf was presented to the National Commission in March of 1992. The Commission responded in April of 1993 by issuing a recommendation to the Guanajuato state authorities calling for an investigation into Molinet's arbitrary arrest and torture. This recommendation has yet to be complied with and he is still in prison, awaiting sentencing.

-Oscar Castro Rodríguez, who was detained on 20 March 1990 by federal judicial police officers in the town of Culiacán and tortured until he agreed to pay them 20 million pesos (US\$7000). Despite death threats made by the officers, Castro brought his case to the Commission, which recommended that two of the officers be dismissed and possibly reprimanded. No actions have been taken to this day against these officers.

-Amir Aboud Sattar, who was arrested without warrant on 14 June 1991 at his home in San Luis Potosí by federal judicial police officers and detained incommunicado for four days during which he was beaten, kicked, sexually abused, and held in a punishment cell, the use of which is prohibited by law in Mexico. On June 19, a delegation of the Republic Attorney General's office visited San Luis Potosí and ordered medical examinations which certified Aboud's allegations of torture. Aboud was released on June 27 and presented a complaint to the National Commission in August of 1991. The Commission issued a recommendation in March 1992 calling for those responsible to be brought to justice. These men are still at large.

-The aforementioned case of the Mixe and Zapotec indigenous community of Trinidad Yaveo in the state of Oaxaca, which was raided by several members of the state judicial police on 25 January 1992. The officers arbitrarily killed Tomás Diego García, arrested six more people and threatened several others, including a crying five year old child who promptly found a pistol in his mouth and was told he would be killed if he didn't stop crying. Those arrested were tortured and forced to sign confessions which they were unable to read. All but one was held in custody on charges of murder. The police also asked about the activities of Octavio Vilches, a local Catholic priest who they accused of being involved in Mixe and Zapotec efforts to assert traditional land rights. Public outcry soon resulted in the release of those in detention, and on 26 March 1992 the National Human Rights Commission issued a recommendation to the Oaxaca State authorities calling for full investigations into the case and the prosecution of responsible officers. Despite this recommendation and despite US Congressional interest in this matter, none of



the officers has been brought to justice.

The effectiveness of the Commission is severely undermined by the fact that it does not have the authority to act on its findings or enforce its recommendations. It can only prescribe actions to the authorities and hope that they are followed. In this regard the Commission is very weak. In addition, the office that is responsible for the investigation and punishment of human rights abuses, the Public Ministry, is the same office which is responsible for the detention and prosecution of criminals. This fact precludes the objectivity of human rights investigations.

The actual number of complaints submitted to the Commission is itself likely to underestimate the number of cases of torture which do occur, as many victims and family members are prevented from reporting by intimidation and threats on the part of interested law enforcement agents. This phenomenon is illustrated by the case of Ricardo López Juárez, who was arrested on 22 March 1990, tortured and forced to confess to a kidnapping, and his mother Guadalupe López Juárez, who received death threats from federal district judicial officers after informing officials that she was going to present a formal complaint regarding the treatment of her son. Ms. López was herself abducted on 22 June 1990 by federal district police and tortured side by side with her son for information regarding the kidnapping. Torture methods included cigarette burns, application of electric shocks, beatings, denial of food and water, and the pulling out of toenails. Ms. López was released on June 24 and Ricardo died later on that night in police custody. While three officers and an attorney were arrested and tried for Ricardo's death, nobody has been sentenced for torture and Ms. López has not received any compensation as required by law, despite official acknowledgment of her torture and Ricardo's murder.

#### THE FEDERAL CODE OF PENAL PROCEEDINGS AND THE PENAL CODE FOR THE FEDERAL DISTRICT

The establishment of the National Human Rights Commission was followed up in February of 1991 by yet more reforms. Changes were made to the Federal Code of Penal Proceedings and the Penal Code for the Federal District. These reforms were aimed at limiting the role of the police in questioning defendants and mandated interpreters for non-Spanish speaking defendants. They also reinforced the prohibition of arbitrary arrests and incommunicado detention as well as any form of abuse or intimidation. The value of confessions as evidence was further limited by a stipulation that confessions by defendants are to be considered valid only when accompanied by additional evidence and when made before the Public Ministry or the courts and in the presence of a defense counsel. Administrative reform followed in

June of 1991 in the Republic Attorney General's Office, one element being the incorporation of new staff including a renowned defender of human rights.

It must be noted that many of these legal reforms repeat stipulations already in the constitution. In a sense, the Commission was established to ensure that the law is respected by law enforcement agents. Sadly, reinforcement provisions against incommunicado detention and pre-judicial detention lasting longer than 24 hours have done little to limit these practices, which remain routine and widespread. Nearly every provision of the February 1991 reforms were violated during the arrest and trial of Pablo Molinet Aguilar, an 18 year old student and poet who was arrested on 24 March 1992 in Salamanca, Guanajuato without a warrant by members of the Guanajuato state judicial police. Molinet was detained incommunicado for several hours, during which he was physically and psychologically tortured with beatings, blows to the ears and death threats. Furthermore, he was forced to sign a blank statement and was not presented to the court until 45 hours after his arrest. When he finally appeared before the court he informed the judge of all the violations which he endured; his complaints confirmed by two independent medical examinations. In spite of all this, and despite the lack of evidence to support his forced confession, Molinet was convicted and is now awaiting sentence.

Mandatory appointments of court interpreters for non-Spanish speaking defendants have also been violated. On 29 March 1993, a full two years after the reforms were made into law, thirteen members of the Tzotzil indigenous community of San Isidro el Ocotal in the state of Chiapas were arbitrarily arrested by the Mexican Army, held incommunicado, allegedly tortured and forced to confess to the murder of two army officers in the absence of an interpreter. 103 indigenous human rights activists arrested in Palenque also in Chiapas during a demonstration on 28 December 1991 were all held incommunicado, beaten and denied access to interpreters before being released three days later. The passage of reforms in February of 1991 has for the most part failed to correct the specific abuses at which the reforms were aimed.

#### THE REFORM OF THE FEDERAL LAW TO PREVENT AND PUNISH TORTURE AND THE LAW OF THE NATIONAL HUMAN RIGHTS COMMISSION

Continuing complaints about the apparent ineffectiveness of the 1986 Federal Law to Prevent and Punish Torture coupled with international scrutiny led to its modification in December 1991. New safeguards were incorporated to protect criminal defendants from torture and other forms of coercion during criminal investigations, the penalty for the crime of torture was increased to a maximum

of 12 years imprisonment and provisions for the payment of compensation to victims of torture and their families by the culprits.

To date there has been only one documented case of actual compensation being paid: that of Joaquín Gallegos. He was arrested at the age of 13 on 10 May 1986 and held for five years without ever being sentenced. During this time Gallegos was brutally tortured until growing public outcry resulted in his release in November of 1991. However, despite compensation, those responsible for Gallego's detention and torture have not been brought to trial. In the meantime, scores of other torture victims in Mexico have yet to receive compensation, despite acknowledgement of their torture by the authorities, and to this date not one Mexican official has been convicted under either the 1986 or 1991 versions of the Federal Law to Prevent and Punish Torture. In addition, foreign nationals have not proven to be immune from the threat of torture by Mexican law enforcement agents.

The most recent legislative attempt at addressing the human rights problem in Mexico is the Law of the National Human Rights Commission, enacted in June of 1992. A response to critics who asserted that the Commission was not able to effectively carry out its functions, the act gave the Commission constitutional status and formal independence and provided for the creation of similar commissions in every state within a year. In addition, the Commission has been provided with substantial resources, including more than four hundred staff and a modern building on the outskirts of Mexico City in order to facilitate its mission of responding to and investigating allegations of torture by the authorities.

While the constitutional institutionalization of the Commission and the apparent commitment of resources on the part of the government are welcome, the Commission's effectiveness seems to be limited in several ways. The Commission has a policy of accepting only those complaints of torture which are fully documented, contrary to international human rights treaties ratified by Mexico, and despite the acknowledgement by the Commission's authorities that torture methods used in Mexico leave little or no trace of visible trauma.

Even when the recommendations of the Commission are followed and guilty officers are dismissed from duty, Amnesty International was informed by a Mexican official in August of 1992, there is no effective mechanism within the Mexican security forces to ensure that dismissed officers are not re-employed and given similar duties at a different location. Dismissals or transferals can not be equated with prosecution for criminal activity. A federal judicial



police commander whose dismissal was recommended by the Commission in connection with the torture of Salomón Mendoza Barajas and others in May 1990 in the town of Aguililla was actually transferred and promoted, contrary to Commission reports to the contrary. The National Commission on Human Rights has remained largely ineffective in eliminating human rights abuses in Mexico despite repeated reform laws, administrative reforms, and reforms of the Commission itself.

#### CONCLUSION

At the Commission's inaugural ceremony on 6 June 1990, President Salinas declared: "Things are going to change in Mexico. We shall confront the new threats to human rights from wherever they come. The new social will and the aim of the reformed State is to adhere to the law... Let there be no doubt: the political line of the government of the Republic is to defend human rights and punish those who violate them; it is to end once and for all any kind of impunity. Mexico, the government, does not condone any violation of the guarantees enshrined in the Constitution."

In this short extract, Salinas alludes to the Constitution which, if followed, could prescribe the protection of human rights. Safeguarding the right against self-incrimination, prohibiting torture and ill-treatment, precluding incommunicado detention among other points, the Constitution defines a system of administration of justice without human rights violations. But often as we have shown, there has been a wide gulf between the paper protections and the reality.

A series of legal and institutional reforms have been instated that not only reiterate and reenforce constitutional provisions but also provide punishment for violators and compensation for those who survive such state violence. These reforms have also not been able to dissolve the breach between the paper protections and the reality: torture cases continue at historical levels and survivors of state violence rarely obtain justice or adequate compensation. Furthermore, those who are supposed to enforce the law are among the law's most blatant offenders.

An obvious benchmark on human rights conditions is the incidence of torture or the persistence of extrajudicial executions. As mentioned, torture remains at historical levels and we have pointed out cases of extrajudicial executions where the guilty parties have not been brought to justice. But not only must sheer volume be monitored but also the type of incident: do such incidents represent a pattern or systemic modus operandi? For if they do, volume might only be a function of international scrutiny: ebbing when the spotlight is on, flowing when the world's attention

is focused elsewhere.

We believe that there is a pattern of abuse, particularly as it relates to the widespread incidence of torture. State and federal law enforcement agents engage in it in the context of their criminal investigations and few of them are ever prosecuted. Indeed, not one officer to our knowledge has been prosecuted under the Federal Law to Prevent and Punish Torture. To address the systemic aspects of human rights violations in Mexico, as in elsewhere, we must address the issue of impunity. Addressing impunity is the key to attacking the systemic causes of human rights violations. Of course there are many other measures the government needs to implement to curb and eliminate human rights violations, many of which are listed at the end of our June 1993 report, but the prosecution of human rights violators must occur if we are to ever hope that torture and other violations end in Mexico. Indeed, once we begin to see that prosecutions happen and violators are charged, tried, and convicted for human rights crimes, only then can we begin to think that there truly is political will to address the continuing problem of human rights violations in Mexico.

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# amnesty international

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## MEXICO

### The persistence of torture and impunity

JUNE 1993

SUMMARY

AI INDEX: AMR 41/01/93

DISTR: SC/CO/GR

This document summarizes Amnesty International's concerns about continuing reports of torture and ill-treatment in the context of the Mexican criminal justice system, and about the prevailing impunity for the perpetrators. The document up-dates the issues raised in the report *Mexico: Torture with impunity* (AI Index: AMR 41/04/91), which launched a limited campaign on Mexico. The document includes a list of recommendations to the Mexican Government which the organization believes can contribute towards an effective end to gross human rights violations in that country.

Since the publication of *Mexico: Torture with impunity* the Mexican Government has adopted some legal and administrative measures which, if effectively implemented, would satisfy some of the recommendations included in the report. The Mexican Government also launched a national and international campaign to publicize its purported commitment towards the protection of human rights. For example, Amnesty International has received hundreds of letters from Mexican officials replying to correspondence sent by the membership in the context of the campaign. Most of the letters are very polite and frequently provide extensive details about the measures adopted by the government to address human rights violations. Nevertheless, Amnesty International remains deeply concerned about continuing reports of torture and other human rights violations by Mexican law-enforcement agents.

The information in this document reflects the main findings of two Amnesty International research trips which visited Mexico in February 1992 and in August 1992. The cases have been selected to illustrate the organization's main concerns about human rights violations in the context of the administration of justice in Mexico. Most of the selected cases also help to illustrate the effectiveness of Amnesty International's campaign as well as challenges still lying ahead to stop such abuses in that country.



The Mexican Government has repeatedly promised to defend human rights and to punish those who violate them. Yet torture is still widespread and to Amnesty International's knowledge nobody has yet been sentenced for the crime of torture in Mexico.

In this report Amnesty international recommends specific measures, which should be urgently and effectively adopted to prevent further cases of torture and other gross human rights violations, and to assist the victims.

KEYWORDS: TORTURE/ILL-TREATMENT / IMPUNITY / DEATH IN CUSTODY / EXTRAJUDICIAL EXECUTION / DISAPPEARANCES / INCOMMUNICADO DETENTION / CONFESSIONS / ARBITRARY ARREST / MASS ARREST / HARASSMENT / SEXUAL HARASSMENT / DETENTION WITHOUT TRIAL / PRISON CONDITIONS / TRIALS / INDEPENDENCE OF JUDICIARY / WOMEN / CHILDREN / JUVENILES / PEASANTS / INDIGENOUS PEOPLES / STUDENTS / WRITERS / MEDICAL CONFIRMATION / HABEAS CORPUS / HUNGER-STRIKE / POST MORTEM / POLICE / MILITARY / PRISON STAFF / COMPENSATION / INVESTIGATION OF ABUSES / MISSIONS / PHOTOGRAPHS /

This report summarizes a 27-page document (8200 words). *Mexico: The persistence of torture and impunity* (AI Index: AMR 41/01/93), issued by Amnesty International in June 1993. Anyone wanting further details or to take action on this issue should consult the full document.

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# MEXICO

## The persistence of torture and impunity

### Introduction:

In September 1991 Amnesty International published *Mexico: Torture with impunity*, (AI Index: AMR 41/04/91), which summarized the organization's concerns about the extensive practice of torture and ill-treatment by Mexican law-enforcement agents. The publication also included a series of recommendations to the Mexican authorities to help end such abuses. The report launched an Amnesty International campaign against torture and impunity in Mexico.

Since the publication of the report the Mexican Government has adopted legislative and administrative measures which, if effectively implemented, would satisfy some of the recommendations which concluded AI's report. Such measures have included the Law of the National Human Rights Commission (*Ley de la Comisión Nacional de Derechos Humanos*), enacted in June 1992, which provides for the office's Constitutional status and formal independence, and for the creation, within a year, of similar commissions in every Mexican state, and also the reforms to the *Ley Federal para Prevenir y Sancionar la Tortura*, Federal Law to Prevent and Punish Torture. Also, the Mexican authorities, including President Carlos Salinas de Gortari, have continued to make public statements vowing to curb the practice of torture and to end the impunity benefiting the perpetrators.

However, despite these positive measures, the widespread use of torture and ill-treatment by law-enforcement agents has continued to be reported in Mexico.

These continuing violations led to strong criticism of Mexico's human rights record by the United Nations Committee Against Torture (CAT) during its November 1992 meeting, when Mexico presented its first periodic report before that body and described the measures it had adopted to implement the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although the Committee welcomed certain measures adopted by Mexico - including the creation of the National Human Rights Commission - it noted that torture and impunity appeared to be extended in Mexico. The Committee called on the government to take effective steps to enforce the reforms which had been adopted.

Amnesty International has also continued to receive evidence of widespread torture in Mexico. Since the publication of *Mexico: Torture with impunity*, the organization has continued to monitor the human rights situation there very closely and has sent two delegations, in February and in August 1992, to look into continuing allegations of

torture and other human rights violations. The delegates who visited Mexico in February 1992 travelled to remote rural areas to investigate reports about torture and other abuses against peasants and members of indigenous communities. The second delegation carried out research into reports of torture and other violations in the context of the administration of justice, and visited several prisons in the country. Both delegations found evidence confirming reports of continuing torture and ill-treatment in Mexico, and the frequent lack of accountability of those responsible.

### **Reforms adopted to reinforce the prohibition of torture in the Mexican Criminal Justice System:**

Increasing complaints about the apparent ineffectiveness of the 1986 Federal Law to Prevent and Punish Torture (see page 28 of *Mexico: Torture with impunity*) led to its modification in December 1991. No government official had apparently ever been sentenced under that law despite hundreds of complaints of torture presented to the authorities since its enactment. The reforms, enacted in January 1992, have incorporated new safeguards to protect criminal defendants from torture or other forms of coercion during criminal investigations; have increased the penalties for the crime of torture to up to 12 years' imprisonment, and include provisions for the payment of compensation to the victim/s by the culprit/s. Together with reforms to the *Código Penal Federal*, Federal Code of Penal Proceedings and to the *Código Penal del Distrito Federal*, Federal District Code of Penal Proceedings, enacted in 1991 (which, among other things, provide for interpreters for non-Spanish speaking criminal defendants), these legislative measures adopted by the Mexican Government to curb human rights violations have expanded the Constitutional safeguards against torture.

### **Limitation of the reforms:**

Amnesty International has welcomed the legal and administrative reforms announced by the Mexican Government but the organization remains deeply concerned that torture is still widespread and torturers are rarely held accountable for their actions.

### **Abuses by law enforcement agents:**

Most of the reports of torture and other human rights violations received by Amnesty International have continued to occur in the context of the administration of justice, principally during the investigative and prosecutorial phases of criminal proceedings (see page 37 of *Mexico: Torture with impunity*). The early stages of criminal investigations in Mexico continue to be under the exclusive responsibility of the *Ministerio Público*, district attorney or public ministry, an office which depends on the federal or state general attorney's office (*procuraduría de justicia*). Therefore, the



*Ministerio Público*, which is responsible for the judicial police, has a monopoly over criminal prosecutions in Mexico: the office is in charge of investigating and prosecuting crimes under its jurisdiction; procuring, evaluating and presenting evidence before the courts; requesting that sentences be imposed, and ensuring that the legal rights and guarantees of defendants, including the right to due process, are fully respected. The office is also responsible for criminal investigations of human rights violations, including those committed by the police under its responsibility, something which reportedly precludes the objectivity of such investigations.

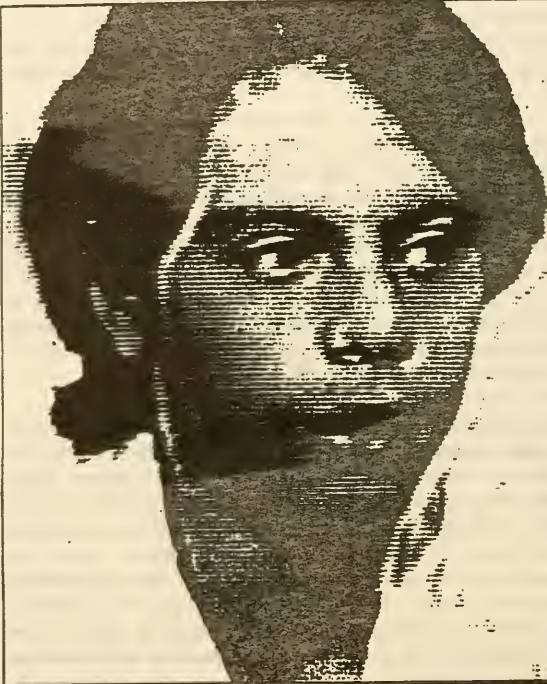
According to continuing reports received by Amnesty International, torture, ill-treatment and other forms of coercion are still used during the early stages of criminal investigations as a means of obtaining confessions. According to human rights monitors, torture and ill-treatment are still frequently practised by members of the judicial police in charge of an investigation. The most frequently reported methods of torture include beatings and kicks; forcible introduction of carbonated water into the victim's nostrils (*Tehuacanazo*); semi-asphyxiation with plastic bags (*la bolsita*), forcible submersion (*pozole*), and intimidation of the victim with death threats. Other methods reported to Amnesty International include electric shocks with electric prods; suspension from the wrists for prolonged periods and food deprivation.

Many of the victims are reportedly further coerced by the police, under threats of torture, to confirm and sign their forced confession already given before the *Ministerio Público*. In many cases known to Amnesty International, the district attorney in the *Ministerio Público* has turned a blind eye to these practices and, on some occasions, has reportedly been present while detainees were being tortured. This practice has been confirmed to Amnesty International by members of the federal judicial police, the Federal District judicial police and the state police interviewed by the organization's delegates who visited the country in August 1992. Therefore, the organization reiterates its recommendations to the Mexican authorities in this regard, included in page 49 of its report *Mexico: Torture with impunity*, under the sub-title: "Separate the authorities responsible for detention and interrogation".

#### Abuses in the administration of justice:

Despite the legislative and administrative reforms adopted by the Mexican government to prevent the use of forced confessions in criminal proceedings, such illegally obtained statements continue to be admitted as evidence by most of the courts involved in such proceedings. Mexican jurisprudence, which gives priority to the initial confessions of a detainee regardless of the circumstances under which they are obtained, has still not been modified in this regard. In many cases reported to Amnesty International, the courts have failed to review statements reportedly obtained under

duress, even when the defendant's claims of torture have been substantiated by medical certificates of the injuries.



Pablo María Jonathan Molinet Aguilar

For example, Pablo María Jonathan Molinet Aguilar, 18, a student and poet, was arrested on 24 March 1992 in Salamanca, Guanajuato, without warrant by members of the state's judicial police. He remained in incommunicado detention for several hours during which he was tortured with beatings, blows to the ears and death threats, and was forced to sign a blank statement. The *Ministerio Público*, who witnessed his arbitrary arrest, dismissed Pablo Molinet's complaints of torture and, based on his forced confession, presented the defendant to the courts, accusing him of murder. The *Ministerio Público* failed to respect the

maximum period of pre-judicial detention, which should not exceed 24 hours: Pablo Molinet was presented to court on 26 March, 45 hours after his arrest. Pablo Molinet complained to the judge that he had been held incommunicado and tortured. He told the judge that he had been forced to sign a blank statement under torture (which was documented by two independent medical examinations). Despite the well documented and serious irregularities surrounding Pablo Molinet's arrest and pre-judicial detention, including incommunicado detention and torture and the lack of evidence other than his

forced confession to substantiate the charges against him, he was remanded in custody in the local prison awaiting trial.



Part of a cartoon depicting the case of Pablo Molinet Aguilar, which appeared in an issue of the Mexican weekly magazine *Filo Rojo*, in November 1992. The text underlines the contradiction between a sophisticated legal framework and the brutal practice in criminal investigation cases.

At the time of writing, Pablo Molinet Aguilar remains in prison awaiting sentence. Despite complaints presented to the state and national authorities, those responsible for his torture have not been brought to justice. A complaint on his behalf was also presented before the National Human Rights Commission in March 1992. On 5 April 1993, more than a year after the incident, the Commission issued a recommendation to the Guanajuato State authorities calling for an investigation into Pablo Molinet's arbitrary arrest and torture. To Amnesty International's knowledge the recommendation has not been complied with.



### Other reforms, same abuses:

Other reforms of Mexican legislation purportedly adopted to reinforce the protection of defendant's rights, particularly those intended to prevent arrests without warrants; to provide legal counsel from the moment of arrest and interpreters for non-Spanish speaking defendants; to provide for medical examinations of detainees, and to dismiss confessions as the sole evidence in criminal proceedings are frequently flouted.

For example, Amnesty International has continued to receive reports about non-Spanish speaking indigenous defendants who have had no access to an interpreter during their questioning by the police during their declarations before the *Ministerio Público*, nor during subsequent court hearings, but who have nevertheless been remanded in custody based on their supposed confessions.

Musician Manuel Manríquez San Agustín, a member of the Otomí indigenous community of Ranchería Piedra Blanca, Tutotepec, in the State of Hidalgo, was arrested without warrant by the Federal District's judicial police in the city of Mexico on 2 June 1990. Manuel Manríquez, who spoke no Spanish at the time, remained incommunicado for four days under police custody and was brutally tortured with beatings, near asphyxiation, burns and electric shocks, and was forced to "sign" papers he could not understand. He was accused of murder and brought before a judge who, based on the defendant's "signed confession" remanded Manuel Manríquez San Agustín to the *Reclusorio Preventivo Norte*, a prison in Mexico City, on charges of murder. Despite the illegality of his detention and the clear signs of torture, which were later certified by a prison doctor, and the lack of evidence other than his signed statements without an interpreter to support the charges, Manuel Manríquez San Agustín was sentenced, in July 1991, to 24 years' imprisonment. The sentence was confirmed on appeal on February 1992, despite the lack of any further evidence. His case too was presented before the National Human Rights Commission which has not issued a statement on his behalf. Since his arrest, Manuel Manríquez has learnt to speak and read Spanish and, in September 1991, co-founded a human rights organization with other indigenous prisoners: the *Comisión de Defensa Campesina e Indígena del Comité Ricardo López Juárez*, which has actively



Manuel Manríquez San Agustín

campaigned on behalf of the rights of Indians and peasants imprisoned in the *Reclusorio Preventivo Norte* and other prisons in Mexico.



The case of Manuel Manriquez San Agustín, as depicted in a cartoon drawn by his fellow prisoners.

Since his imprisonment, Manuel Manríquez has become increasingly involved in campaigning for an end of torture and other human rights violations in Mexico. For example, on the first of April 1993 he joined a hunger strike carried out in several Mexican prisons by more than 50 prisoners. The detainees were calling for an end to torture, and for fair and prompt trials in the Mexican criminal justice system.

Human rights violations against members of indigenous communities:

The victims of torture in Mexico come from most walks of life, but are usually from the poorest sectors of the population. Amnesty International has continued to receive reports of torture and other human rights violations against peasants and members of indigenous communities who often lack the power, knowledge or counselling to defend their individual rights against abusive officials. They are the most frequent victims of the ineffectiveness of the reforms adopted by the Mexican Government to prevent such abuses.

For example, on 29 March 1993 thirteen members of the Tzotzil indigenous community of San Isidro el Ocotal, municipality of San Cristóbal de las Casas, Chiapas, were arbitrarily arrested by members of the Mexican Army who claimed the Indians were responsible for the murder of two army officers on 20 March 1993. The detainees remained incommunicado in military custody until their transfer to the headquarters of the *Ministerio Público*, district attorney, in San Cristóbal de las Casas on 30 March, where they remained in detention.

According to a report issued by the VII Mexican Army Region on 29 March, before the detainees had been presented to the prosecuting authority, they had "confessed" to their participation in the abduction, killing and disposal of the bodies of two army corporals who had allegedly discovered an illegal saw-mill, close to San Isidro el Ocotal, in an area where woodcutting is forbidden.

But according to the detainees and to reports from members of the community of San Isidro el Ocotal; from local human rights organizations, and from Samuel Ruiz García, Bishop of San Cristóbal de las Casas, a renowned campaigner for human rights, the thirteen Indians detained by the Army had been forced to confess, under torture and without an interpreter, to their participation in the killings.

San Isidro el Ocotal is a peasant community inhabited by 46 Tzotzil families. On the days following the abduction and killing of the two army officers, the community was reportedly besieged by an army unit which carried out arrests, raided houses without warrants and tortured several members of the community to obtain confessions of guilt



of the murders. According to reports, torture included beatings and kicks, mock executions in front of relatives and threats of rape.

Following a campaign by local human rights activists on their behalf the thirteen Tzotzil detainees were released on 31 March for lack of evidence linking them to the murder they had been accused of by the army. According to reports, most of the detainees displayed injuries consistent with their allegations of torture. To Amnesty International's knowledge, those responsible for their illegal arrest, torture and ill-treatment have not been brought to justice, nor have the victims received any form of compensation, despite complaints on their behalf presented to local and national authorities.

#### Ineffectiveness of the *recurso de amparo*:

The *recurso de amparo*, similar to a writ of habeas corpus (see page 45 of *Mexico: Torture with impunity*), has continued to be reported as ineffective in protecting detainees from torture during the initial or early stages of detention - reportedly as a result of the inherent delays in court proceedings. It has also proved to be an ineffective method to challenge court decisions based on forced confessions. For example, in the case of Manuel Manríquez San Agustín discussed above, the victim presented a *recurso de amparo* in February 1992 against the decision of the Appeal Court confirming his sentence. At the time of writing there is still no decision concerning his *recurso de amparo* at the time of writing. Manuel Manríquez San Agustín remains in prison in Mexico City and those responsible for his illegal detention and well documented torture have never been brought to justice, nor have they been removed from their posts.

In the case of Pablo Molinet Aguilar, also discussed above, a *recurso de amparo* was presented on his behalf before the judge on 20 April 1992. The judge ruled favourably on 3 August 1992 and recommended Pablo Molinet's unconditional release. The decision was based on the fact that he had been arrested without a warrant and that he had been coerced by the police to produce a statement of guilt. Despite this favourable ruling, the court in charge of Pablo Molinet's case decided against his release and ordered the trial to continue.

Finally, the *recurso de amparo* also continues to be largely inaccessible to vast sectors of the population who lack the resources and the legal counselling to pursue this legal remedy.

### Torture in Mexican prisons:

Amnesty International has also continued to receive reports about torture and ill-treatment in Mexican prisons. For example, on 28 June 1992 Pablo Rodríguez Santoy, 36, and Francisco Cejudo Pandilla, 27, two inmates at the state prison of San Luis Potosí, accused of preparing a prison escape, were tortured with beatings, kicks and threats of "disappearance" by the prison's director. The director allegedly accused the two of preparing a prison escape, although he never presented a criminal complaint against them. Instead, he ordered their confinement in punishment cells ("*tapadas*"), with no food, no sanitary facilities and no medical care. They remained in such conditions for three days during which they allegedly suffered beatings by prison warders. The prisoners' condition was made known as a result of an enquiry requested on 2 July by a relative. Both men were then returned to their cells but continued to suffer harassment by prison officials, including members of the prison's psychology department, apparently interested in stopping their complaints. Following the public outcry about the case, the prison director was removed from his post. Also, the National Human Rights Commission issued a recommendation (97/1992) on behalf of the two inmates, calling for full investigations and the prosecution of the culprits. However, to Amnesty International's knowledge, neither the prison director nor other prison officials, who reportedly also participated in the torture and ill-treatment of prison inmates, have been brought to justice.

Mexican law prohibits the use of punishment cells, in any prison establishment or detention facility, although Amnesty International has received several reports of their continuing existence and use in a number of prisons in Mexico. For example, the existence of the punishment cells in the prison of San Luis Potosí where Pablo Santoy and Francisco Pandilla were confined had been reportedly denied by prison officials in the past. Their existence was officially acknowledged only after the public scandal which emerged as a result of the Santoy-Pandilla case. At the time of Amnesty International's visit to the prison in August 1992, when the delegates interviewed Pablo Santoy and Francisco Pandilla, the *tapadas* had been recently painted, and the prison officials interviewed denied their use as punishment cells.

### Immunity from prosecution:

Amnesty International continues to believe that the principal reason for the continuing practice of torture and ill-treatment in Mexico is the effective immunity from prosecution commonly enjoyed by law enforcement agents torture. The Mexican authorities, including the National Human Rights Commission, have stated that only fully documented complaints of torture would be investigated, thereby failing to comply with their obligation to fully investigate all complaints of torture, as required under

international human rights instruments signed and ratified by Mexico. Moreover, impunity has continued to benefit those responsible for some cases where fully documented complaints presented before the *Ministerio Público* have been supported by corresponding recommendations made by the governmental National Human Rights Commission.

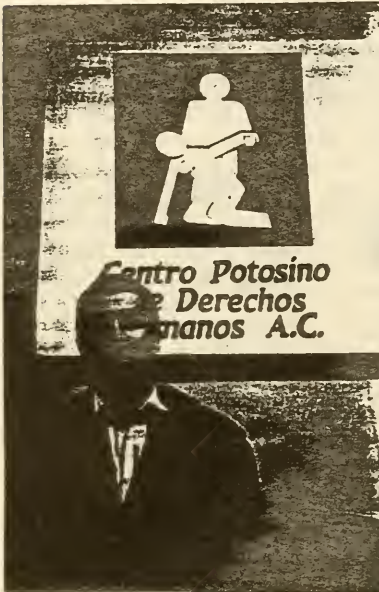


Amir Aboud Sattar moments after his arrest on 14 June 1991

For example, Amir Aboud Sattar was arrested without warrant on 14 June 1991 at his home in San Luis Potosí by federal judicial police officers and a delegate of the *Procuraduría General de la República*, Republic Attorney General's Office. During his transfer to prison he was tortured with beatings and kicks and was sexually abused. He remained in prison until 27 June, the first four days incommunicado and in a punishment cell. Following widespread complaints about Amir Aboud Sattar's illegal arrest and torture, a delegation of the Republic Attorney General's Office visited San Luis Potosí on 19 June to look into the case. The delegation interviewed the prisoner and ordered medical examinations, which found injuries consistent with the prisoner's allegations that he had been tortured. The

delegation recommended the prisoner's immediate release and the prosecution of those responsible for his torture. In August 1991 Amir Aboud Sattar presented a complaint about his case to the National Human Rights Commission, which issued a recommendation (39/92) in March 1992, calling for those responsible to be brought to justice.





Amir Aboud Sattar, pictured in August 1992, in the offices of the *Centro Potosino de Derechos Humanos*, a human rights organization he has helped to found.

Despite the criminal complaints presented against those allegedly responsible for Amir Aboud Sattar's torture, and two official reports confirming the complainant's allegations, those responsible for Amir Aboud Sattar's illegal arrest and torture have not been brought to justice. Furthermore, on 8 July 1992 the Republic Attorney General's Office made a public statement contradicting its initial report on the case of Amir Aboud Sattar, which had been based on forensic findings and several testimonies. The new statement denied the victim's complaints of torture, claiming that these had been based on his "sexual fantasies" (*fantasías sexuales*), and announced that the office would not prosecute those allegedly responsible. The next day, the National Human Rights Commission publicly rejected the Republic Attorney General's Office statements and called for the investigations to continue. To Amnesty International's knowledge, those responsible have remained at large.

Amir Aboud Sattar has now become a renowned human rights campaigner in San

Luis Potosí, where he has helped to found the *Centro Potosino de Derechos Humanos*, the Potosí Centre for Human Rights, a non-governmental organization.

On 25 January 1992, the Mixe and Zapotec indigenous community of Trinidad Yaveo, in the state of Oaxaca, was raided by several members of the state judicial police who arrested six people, threatened several others including children, and arbitrarily killed Tomás Diego García (See *Mexico: Human Rights violations against members of the Mixe and Zapotec indigenous community of La Trinidad Yaveo, Oaxaca*, AI Index: AMR 41/01/92). Those arrested were tortured, forced to sign confessions and all except one were remanded in custody on charges of murder. As a result of growing public outcry about the case, the state authorities released those in detention, but have thus far failed to bring to justice those responsible for the torture of members of the community, and for the arbitrary killing of Tomás Diego García.

On 26 March 1992 the National Human Rights Commission published recommendation 52/92 to the Oaxaca state authorities, calling for full investigations into the case, and for those responsible to be brought to justice. In a report published in June 1992, the National Human Rights Commission claimed that the authorities had partially complied with recommendation 52/92, although there was no indication that any official had been brought to justice in connection with the torture or the killing. In October 1992 the Commission informed Amnesty International that the state authorities had not prosecuted those responsible for the crimes in La Trinidad Yaveo because the victims and their relatives had failed to present criminal complaints. This explanation was apparently considered satisfactory by the Commission, despite Mexico's obligations under the international human rights instruments it has signed and ratified - including the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - to investigate every case of suspected torture and homicide by government officials, irrespective of any complaint.



Members of the indigenous community of La Trinidad Yaveo, Oaxaca, during a meeting held with AI delegates in February 1992 to testify about human rights violations. Six members of the community were arbitrarily arrested and tortured, and another, Tomás Diego García, was arbitrarily killed by members of the *Policía Judicial del Estado*, State Judicial Police, who raided the community on 25 January 1992. Neither the victims nor the relatives of the deceased have received any form of compensation and those responsible have not been brought to justice.

Amnesty International - which had recommended to the Mexican authorities in its report *Mexico: Torture with impunity* that the absence of a complaint should not deter a criminal investigation into alleged human rights violations - is deeply concerned about the lack of criminal procedures against those responsible for the brutal torture of six members of the indigenous community of La Trinidad Yaveo, and for the arbitrary killing of Tomás Diego García. The organization is also concerned about the lack of compensation for the victims and the relatives of the deceased in this indigenous community.

Amnesty International continues to be deeply concerned about the effective impunity which benefits many of those responsible for gross human rights violations in Mexico. Despite recent announcements by the Mexican authorities that several members of the security forces, particularly the federal judicial police, had been dismissed and prosecuted for criminal offenses including torture and other human rights violations, at the time of writing in late May 1993 many officials under criminal investigation remain at large and to Amnesty International's knowledge no official has yet been convicted for torture in Mexico.

In its report *Mexico: Torture with impunity* Amnesty International also recommended that any law enforcement agent charged in connection with the crime of torture should be immediately suspended from duties directly related to arresting, guarding or interrogating detainees. In August 1992 the *Director General de Prevención y Readaptación Social*, General Director for Prevention and Social Re-Adaptation, told Amnesty International's delegates that there was no effective mechanism within the Mexican security forces to ensure that officers who are dismissed for human rights violations are not re-employed and given similar duties, particularly in relation to detainees. The organization is deeply concerned about the continuing failure to effectively dismiss many of those officials responsible for torture and other human rights violations, and to effectively prevent their re-employment by other governmental security agencies.

#### **Lack of effective compensation for victims:**

Despite legal reforms enshrined in the federal law to prevent and punish torture, which provide for compensation for victims, Amnesty International knows of only one case where a victim of torture and gross miscarriage of justice has received satisfactory official redress: that of Joaquín Gallegos, also known as Joaquín Capetillo Santana, who had been arrested in the town of Villahermosa by the police in May 1986, when he was 13 years old. Following his arrest Joaquín was brutally tortured and detained under false charges based on his forced confessions (see page 7 of *Mexico: Torture with impunity*). Joaquín was never sentenced but remained in an adult's prison until his



release in November 1991, following growing public outcry against his detention and torture. The organization has welcomed the Tabasco state authorities' decision to release Joaquín free of charges, and provide him with compensation, but the organization is still deeply concerned that those officials responsible for Joaquín's torture and for gross abuse of internationally recognized standards for the administration of justice, including the *International Covenant on Civil and Political Rights*, have not been brought to trial.



Joaquín Gallegos, also known as Joaquín Capetillo Santana (left), shortly after his release free of charge in November 1991. He had been arrested in 1986, when he was 13; brutally tortured to confess to a crime, and remanded in prison awaiting trial, but was never sentenced. Here he is photographed with

René Loyo Cárdenas, a journalist whose untiring campaign on behalf of Joaquín helped to secure his release. They are both presently working on behalf of children's rights in Mexico.

According to several human rights monitors and government officials interviewed by Amnesty International's delegates in Mexico, the organization's campaign against torture had helped to ensure Joaquín's release and compensation, which consisted of a sum of money to ensure adequate treatment for the injuries and psychological trauma he had suffered during so many years of unjustified detention. Joaquín is presently working on behalf of children's rights in Mexico.

Meanwhile, scores of victims of torture in Mexico have not received any form of compensation even after their torture and ill-treatment has been acknowledged by the authorities.

For example, Guadalupe López Juárez was brutally tortured with her son Ricardo López Juárez in June 1990 by members of the Federal District judicial police and a special attorney. Ricardo died on 24 June 1990 as a consequence of injuries sustained under torture (see page 14 of *Mexico: Torture with impunity*). Three policemen and the attorney were arrested and tried for Ricardo's murder, but despite the official acknowledgement of Guadalupe's abduction and torture by the police, nobody has been sentenced for her torture: she has not received compensation, nor has the family received any official reparatory measure for Ricardo's brutal killing.

In November 1990 Guadalupe López Juárez was awarded a medal by her municipal council for her continuing struggle for justice on behalf of her son and against human rights violations in Mexico. In 1990 a group of prison inmates in the *Reclusorio Preventivo Norte*, the prison in Mexico City where Ricardo had been detained, founded a human rights commission which they named in his honour. However, such public sympathy for the victims did not prevent further harassment of Guadalupe's family. In July 1992 another son Julio Octavio, 14, was reportedly abducted in the streets of Mexico City by unknown men, who questioned him under threats about her mother's activities on behalf of Ricardo. Nobody was brought to justice for this incident. Since August 1992 the family has reportedly not received any threats or harassment.



Guadalupe López Juárez

### **The National Human Rights Commission:**

Amnesty International has welcomed the Mexican Government's decision to grant Constitutional status to the National Human Rights Commission and to create similar offices in each and every state. The government has also provided the commission with substantial resources which include more than 400 staff and a modern building in the outskirts of Mexico City.

Nevertheless, Amnesty International remains deeply concerned about the repeated failure of the Mexican authorities to fully comply with the Commissions' recommendations. For example, in the first two years after its creation, the National Human Rights Commission received 10,244 complaints of alleged human rights violations and issued 269 recommendations based on 235 cases. In its report published in June 1992 the Commission expressed its concerns that 136 of its recommendations had not been fully complied with. These concerns were again made public by the Commission in a report published in September 1992.

Also, although Amnesty International welcomes the Commission's statements calling for full compliance with its recommendations, the organization is concerned that in a number of instances the Commission has reported that recommendations have been fulfilled despite indications to the contrary. For example, in the case of Ricardo López Juárez (see above), the National Human Rights Commission issued recommendation 15/91, calling for full investigations to bring all those responsible to justice, including the director of the prison establishment where Ricardo López Juárez had been detained and the forensic doctor/s who falsified his death certificate. Although Amnesty International has welcomed the investigation into the case which helped to confirm Ricardo López Juárez' death under torture, the organization remains deeply concerned that several of those allegedly responsible have never been brought to justice. According to reports, the prison director allegedly responsible for allowing the torture of Ricardo López Juárez was never brought to justice, and was instead promoted in the second half of 1992 to the post of Deputy Commander of the Federal District's judicial police.

In the case of the possible extra-judicial executions of the three brothers Erik Dante, Jaime Mauro and Héctor Ignacio Quijano Santoyo, and the torture of the latter, by members of the federal judicial police in Mexico City on 14 January 1990, the National Human Rights Commission issued two recommendations (3/1991 and 50/1992) to the General Attorney's Office calling for full investigations and for those responsible to be brought to justice. To Amnesty International's knowledge, no official has been arrested in connection with this case.



Forensic evidence of the human rights violations suffered by the three brothers first emerged in Amnesty International's report *Mexico: Torture with impunity*, which summarized the findings of a forensic analysis carried out by an expert, commissioned by the organization, on the autopsy reports and photographs of victim's bodies. Amnesty International's findings, which provided evidence supporting claims that Héctor had suffered torture before his killing, were forwarded on request to the National Human Rights Commission. The findings were confirmed by a second independent forensic examination ordered in 1992 by the Mexican authorities. Despite such supportive evidence of gross human rights violations, those responsible for the torture of Héctor and the killings of the three brothers have not been brought to justice at the time of writing. Their victim's father, Francisco Quijano García "disappeared" from his home in Mexico City on 21 June 1991. His body was found in the same city in March 1992. Despite reports that he had been seen in detention in the Attorney General's Office after his "disappearance", the authorities maintained that his abduction and murder had been carried out by a former business partner over money, and further investigations were closed.

In another case, a federal judicial police commander allegedly responsible for the illegal arrest and torture of Salomón Mendoza Barajas and others in the town of Aguililla, in May 1990 (page 11 of *Mexico: Torture with impunity*); and for the death under torture of Pedro Yescas Martínez in the town of Durango, in October 1990 (page 20 of *Mexico: Torture with impunity*), has reportedly remained at large despite repeated recommendations made by the National Human Rights Commission. In a special report issued in September 1991 the National Human Rights Commission said that the officer had been dismissed in connection with the killing of Pedro Yescas Martínez. Nevertheless, on 11 February 1992 the Republic Attorney General's Office said that he had in fact been transferred and promoted, together with another officer also allegedly involved in gross human rights violations.

Amnesty International believes that unless the Mexican government fully abides by its commitment to effectively bring all those responsible for torture and other human rights violations in Mexico to justice, torture will continue to be widespread.

#### **Measures to bring and effective end to torture and other gross human rights violations in Mexico:**

As illustrated by the above discussion, the measures adopted in recent years by the Mexican Government, albeit welcome steps towards the prevention of human rights violations, have been insufficient to significantly curtail and much less to stop such

abuses in the country. Their persistence, and the impunity from which most of the perpetrators continue to benefit, should call into question the effectiveness of the measures implemented so far.

Amnesty International therefore urgently appeals to the Mexican Government to adopt and effectively implement the following recommendations. The majority of these have been included in previous reports which Amnesty International has presented to the government, in particular those contained in the document *Mexico: Torture with impunity*, and are relevant with respect to other human rights violations apart from torture and ill-treatment about which Amnesty International has continued to express its concerns, including "disappearances" and extra-judicial executions.

### Recommendations

#### 1. Prevention of arbitrary arrest

♦ Arrests should only be authorized in the case of flagrante delicto or where a judicial warrant exists; authorization in the absence of these conditions should not be granted on the pretext that no judge was available.

♦ All arrests should be carried out under strict judicial control and only by authorized personnel.

● Law enforcement officials should adequately identify themselves and present arrest warrants at the time of arrest.

● Everyone should be informed, at the time of arrest, of the specific reasons for their arrest.

● All detainees should also receive an oral and written explanation, in a language they understand, of how to avail themselves of their legal rights, including the right to lodge complaints of ill-treatment.

● The armed forces should be prohibited from arresting, holding in custody or interrogating civilian detainees.

● Failure to adhere to these safeguards should lead to the disciplining or bringing to justice of those responsible.

## 2 Prevention of incommunicado detention

- All detainees should be brought before a judge promptly after arrest, and within the period stipulated by law.

- ◆ The government should oversee the effective elimination of the use of so-called "punishment cells" and other cruel, inhuman and degrading treatment in all the country's prisons.

- All detainees should have access to relatives and lawyers promptly after arrest and regularly throughout their detention or imprisonment.

- The government should provide free legal assistance to defendants without resources. In addition, interpreters should be provided for non-Spanish speaking defendants, without exception.

- Relatives should be informed immediately of any arrest and should be kept informed of the detainee's whereabouts at all times.

- Rulings which result from a petition of *recurso de amparo* in cases of detention, including unacknowledged, irregular or arbitrary detention, should be effectively enforceable throughout Mexico.

- Detainees and prisoners should be held only in official, known detention centres, a list of which should be widely publicized.

- Every detention centre should be required to keep a detailed up-to-date record, bound with numbered pages, of the time of arrest and the identities of those who carried out the arrest, as well as the time the detainee appeared before the Public Ministry Agent and before the judicial authority.

## 3 Strict controls over interrogation procedures

- Interrogation should take place in the presence of a lawyer to ensure that statements taken in evidence from a detainee are given freely and not as a result of coercion.

- In addition to a lawyer, a female officer should be present during interrogation of women detainees.

- Children should only be questioned in the presence of a parent or next of kin.



- The date, time and duration of each period of interrogation should be clearly recorded, as well as the names of all those present during interrogation. These records should be open to judicial scrutiny and to inspection by lawyers and relatives of detainees.
- The government should publish current guidelines of interrogation procedures and periodically review both procedures and practices, inviting submissions and recommendations from civil rights groups, defence lawyers, bar associations and other interested parties.

#### 4 Separation of the authorities responsible for detention and interrogation

- There should be a clear and complete separation between the authorities responsible for detention and those responsible for the interrogation of detainees. This would allow an agency not involved in interrogation to supervise the welfare and physical security of detainees.
- The role of the Public Ministry, which is currently responsible for detention, interrogation and prosecution in criminal proceedings, should therefore be revised.

#### 5 Prohibition of the use of confessions extracted under torture

- Confessions obtained as a result of torture or other ill-treatment should never be admitted in legal proceedings, except as evidence against the perpetrators.
- Defendants who were convicted on the basis of coerced confessions should have their convictions promptly reviewed.

#### 6 Implementation of judicial safeguards

- ◆ The government should initiate effective reforms to the administration of justice, with regard to the codes of procedure, the provision for appeal mechanisms and the selection, training and supervision of appropriate personnel.
- ◆ Respect for the presumption of the detainee's innocence shall be demanded throughout the judicial proceedings.
- Judges should be vigorous in examining the legality of detention and the physical condition of defendants, and in investigating all claims of torture.

● International standards pertaining to the judiciary, including those contained in the UN Basic Principles on the Independence of Judiciary, should be incorporated in Mexican law and legal practice in the interests of a genuinely independent and impartial judiciary.

#### 7 Implementation of judicial supervision of detention

● Any form of detention or imprisonment and all measures affecting the human rights of a detainee or prisoner should be subject to the effective control of a judicial authority.

● The government should take particular care to ensure that detainees who are vulnerable for reasons of age or gender are not tortured, ill-treated or harassed.

● The confinement of children in prisons for adults should be strictly prohibited.

● All detention centres should be visited and inspected regularly by representatives of an independent body. These inspectors should conduct their visits without advance warning.

● Any detainee or prisoner should have the right to communicate freely and in full confidentiality with the inspectors. The inspectors should have unrestricted access to all relevant records and should be authorized to receive and deal with detainees' complaints.

● The inspection body should prepare detailed reports on the findings of each visit, and should ensure that appropriate action is taken to remedy all shortcomings relating to the treatment of detainees and prisoners.

● The inspection body should also make recommendations for improving conditions of detention in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners.

#### 8 Adequate medical safeguards

● An independent medical examiner's office should be established, with administrative autonomy, to provide forensic expertise at a national level.

● Medical examinations should be provided to detainees and prisoners on a regular basis and should be performed by independent professionals under the supervision of a professional association, in accordance with the following principles:

— A medical examination should be carried out on each detainee promptly after arrest and before interrogation.

- 
- Detainees should be medically examined every 24 hours during the period of interrogation: on a frequent and regular basis throughout detention and imprisonment; and immediately before transfer or release.
  - These examinations should be performed personally by the authorized doctor, who should explain to the detainee the importance of having a full and contemporary record of his or her condition.
  - Detainees should be informed of the importance of these medical examinations in verbal and written notice of their rights.
  - Examinations should be carried out in private, exclusively by medical personnel. Special care should be taken to ensure that examinations of women prisoners is carried out in an acceptable manner.
  - Each detainee should have access to a medical officer at any time on the basis of a reasonable request.
  - Detailed medical records on detainees should be kept including: weight, state of nutrition, visible marks on the body, psychological state and complaints about health or treatment received.
  - These records should be confidential but should be communicated, at the request of the detainee, to a legal advisor, his or her family, or the authorities charged with investigating the treatment of prisoners.
  - Each detainee should be entitled to private examinations by his or her own doctor at the request of the detainee or the detainee's lawyer or family.
  - The medical examination of alleged victims of human rights abuses should only be conducted in the presence of independent witnesses: a health professional designated by the family, the legal representative of the victim or a professional designated by an independent medical association.
  - Forensic doctors should be provided with the training and resources necessary for the diagnosis of all forms of torture and ill-treatment.
  - In all cases of deaths in custody, forensic investigations should conform to international standards including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.



### 9 Investigation of all reports of torture

- All reports of suspected torture or ill-treatment should be promptly, thoroughly and impartially investigated.
- In cases where detainees allege that their confessions were extracted under torture, the burden should be on the detaining and interrogating authorities to prove that the confession was voluntary and that torture and ill-treatment did not occur.
- The investigating authority should have the power to obtain all information necessary to the inquiry; adequate financial and technical resources for effective investigation; and the authority to oblige those accused of torture to appear and testify.
- Any government official who suspects that torture has been committed should report it to the relevant authorities, which should fully investigate all such reports.
- The absence of a complaint by the victim or relatives should not deter investigation.
- The involvement or complicity of health professionals in the torture and ill-treatment of detainees should be thoroughly and impartially investigated. Disciplinary proceedings should be instituted against medical personnel found to have breached the UN Principles of Medical Ethics.

### 10 Bringing torturers to justice

- Any law enforcement agent or person acting under the direction of law enforcement agents who is responsible for torture, or for ordering, encouraging or condoning the practice of torture, should be brought to justice.
- Any law enforcement agent charged in connection with the crime of torture should be immediately suspended from duties directly related to arresting, guarding or interrogating detainees. If convicted, he/she should be automatically dismissed from duty, in addition to whatever other punishment is imposed by the court.
- The crime of torture should not be subject to any statute of limitations.
- ◆ Any decision to suspend or dismiss state officials accused or convicted of human rights violations should be made public.

- ◆ An effective information system should be set up to prevent state officials dismissed for human rights violations from being reassigned to similar posts in other jurisdictions or departments.

#### 11 Protection of victims and witnesses

- The government should ensure that all necessary measures are taken to prevent attacks on or threats against victims of torture and their relatives, witnesses to human rights violations and human rights activists; and that all those responsible for such actions be brought to justice.

#### 12 Compensation for victims of torture

- All victims of torture should receive medical treatment and rehabilitation where necessary, and financial compensation commensurate with the abuse inflicted.
- In cases where a detainee's death is shown to be the result of torture or ill-treatment the deceased's relatives should receive compensatory and exemplary damages.

#### 13 Promoting respect for human rights

- An absolute prohibition of torture and ill-treatment as crimes under domestic law should be visibly displayed in every detention centre in the country.
- The government should adopt and publish a code of conduct for all law enforcement agents who exercise powers of detention and arrest. This code should conform to the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- In addition to categorically prohibiting the use of torture and ill-treatment, the Mexican penal code should specify that law enforcement agents must oppose the use of torture or ill-treatment, if necessary by refusing to carry out orders to inflict such treatment on detainees, and report any such abuses of authority to their superior officers and, where necessary, to the authorities vested with review or remedial powers.
- Breaches of the code should result in specified disciplinary sanctions and criminal prosecution of the agents involved.
- The government should ensure that all law enforcement agents and members of the armed forces receive adequate training on human rights standards, both domestic and international, and on the means for their protection.

#### 14. Compliance with international law

● Domestic law and practice should fully conform with international human rights instruments including human rights conventions ratified by Mexico, as well as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

#### 15. Recognition of international procedures for human rights protection

● The government should ratify the (First) Optional Protocol of the International Covenant on Civil and Political Rights, which allows individuals who have exhausted all domestic legal remedies to submit a written complaint to the UN Human Rights Committee alleging that their rights under the Covenant have been violated.

● The government should declare, under Article 22 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that it recognizes the full competence of the UN Committee against Torture to investigate complaints of human rights violations lodged by individuals who have exhausted all domestic legal remedies.

● The government should recognize the jurisdiction of the Inter-American Court of Human Rights over all matters relating to the interpretation or application of human rights safeguards contained in the American Convention.

#### 16. Effective investigations into the "detained-disappeared"

◆ The government should press ahead with investigations under way into cases of forced "disappearance" where the victims are still "disappeared", with the aim of bringing to justice those responsible and clarifying the fate of the victims.

#### 17. Protection of the rights of migrants and refugees

◆ The government should create effective mechanisms to guarantee that persons seeking refugee status are adequately and fairly assessed and categorized.

◆ The authorities should create effective control mechanisms in detention centres for illegal immigrants in order to prevent the use of cruel, inhuman and degrading treatment against them.



- ♦ The government should ratify the UN Convention relating to the Status of Refugees and the Optional Protocol to this Convention.

## MAP OF MEXICO

## STATES

## • STATE CAPITALS



STATEMENT  
OF  
JAVIER LIVAS

BEFORE THE COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

JUNE 29TH, 1993

WASHINGTON, D. C.

Javier Livas  
June 29th, 1993  
Washington, D. C.

Many scholars compare the Mexican constitution with the US constitution. Then it is said that we copied your system of government. Both constitutions have a bill of rights, establish a republic made up of states united in a federation, with three branches of government: a bicameral legislature, an Executive, and a Supreme Court. It follows that Mexico should have a similar protection of human rights.

But, to truly understand the current situation of human rights in Mexico there is one first and major consideration to make.

The constitution is not in any true sense a law but a plan for the future written by the revolutionaries in 1917. The democratic practices did not exist at the time, nor the culture, nor a true federation. They tried to get the plan going and created a strong presidency, more in the tradition of a central government; not surprisingly, the plan never took off.

It was until 1929 when a single party was created that the plan began to have a chance. So it seemed. The party entrusted with carrying out the plan of the revolution is now called the PRI. Recently, the PRI pretty much gave up on fulfilling the plan. Perhaps the plan was not a good one, but with the abandonment of the plan so went the idea of a society ruled by law.

The truth of the matter is that there is a parallel and unwritten constitution, an alternate order, serving as law in



Mexico. Its one and only one purpose which is to preserve the current government in power. It is called *presidencialismo*. The present government is an inheritor of the revolutionary movement but certainly not its guarantor anymore.

This statement might seem exaggerated for the untrained eye, but there is much evidence around that proves this is the case. Recent changes in constitution show that the situation is not only not improving, but perhaps it is becoming worse.

If we take human rights protection as the measure of the adequacy of the constitutional system, then the particular features of the original mexican constitution stand out as very lacking in this respect. If in addition to this, current practices in the application of the law are studied then it is imposible not to conclude that the government is not only a major offender of human rights but an obstacle to the achievment of international standards.

## ELECTORAL LAWS

- When we look at the electoral laws, there are three main points to consider:

1. The revolutionary constitution did not say that it was the government's responsibility to organize the elections. The newer constitution however, says it very clearly. This addition clearly displaces the idea contained in article 39 of the constitution that still considers the people at large as the ultimate sovereign. As a result the government control all electoral bodies.

2. A so called "governability clause" was added to the constitution in the 1987 reform as a safety valve measure

that would assure the ruling party an automatic majority in congress in future elections. It helped it keep control in the 1988 elections.

3. Electoral laws do not stop the current electoral practice by which the government is making the most of its monopoly on the practice of "porkbarrel politics". An example of this is the PRONASOL program. Only one person decides all expenditures nationwide and capitlizes on them politically: the president.

## FREEDOM OF THE PRESS

Freedom of the press is still guaranteed in the text of the constitution, but it is thwarted by varied means. Two examples:

1 The government's active control of newsmedia through graft and corruption. The monopoly on the issuing of concessions to operate radio and TV stations is used skillfully for political purposes.

2 The president will never submit himself to an open questions news conference.

## THE ECONOMY

The 1983 constitutional reform incorporated the idea that centralized planning was the Executive's prerogative not one of Congress. The reform has been serving as a basis for the control of all economic activity in the country. The economic pact, a wage and price control decree is an example of that policy in action.

Executive accountability to Congress is written into the constitution but that is as far as it gets. Congress control is null. The presidentially appointed congressmen of the PRI have voted a law where the president is allowed to change the amount of expenditures on any item on the budget.

## PUBLIC SECURITY

Public security is managed with a criteria that can be labeled as managing by scandal. Police are removed only when and if scandal erupts. Drug traffickers are removed following the same criteria.

Torture is part of a widespread practice of intimidation that helps the government maintain its credibility as the one in power.

## Concluding remarks

Clearly, the human rights problems in Mexico are structural and heavily linked to the idea of sovereignty. Concern over any transgressions of human rights is universal concern, but mexicans, and specially the government have a hard time accepting any form of foreign pressure or intervention.

For example, the mexican government has rejected even considering any suggestion made by the Interamerican Commission of Human Rights in regard to electoral laws.

It is not for me to draw conclusions on how this situation may or may not affect the northamerican free trade Agreement. I come to submit to you what I consider to be the facts about our unique system of government.



## JAVIER LIVAS

Born in Monterrey, Mexico

Age: 47

Married, four children

Degree in Law and an MBA

Son of a former governor of the state of Nuevo Leon, has dedicated the last eight years to fight for democracy in Mexico.

Well known as a political activist; co-founder of several national and local civil rights groups such as the "Asamblea Democratica por el Sufragio Efectivo" (ADESE) and the "Movimiento Ciudadano por la Democracia" (MCD).

He joined the opposition party, PAN, in 1990 and is currently an officer in that party at a local level.

Has written several books whose titles in spanish are:

1. Corrupcion y Burocracia Municipal (Municipal Bureaucracy Corruption)
2. Cibernetica, Estado y Derecho (Cybernetics, the State and the Law)
3. El Libro del Poder (The Book of Power)
4. Confesiones de un Ingeniero Electoral (an interview)

Current and long term interests are:

Politics

Management Cybernetics

Whatever is left for family and golf.

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FOUNDING CHAIR  
1981-1987

### HUMAN RIGHTS IN MEXICO

#### House Committee on Small Business

#### Testimony by Juan E. Méndez,

#### Executive Director, Americas Watch

June 29, 1993

Mr. Chairman, on behalf of Americas Watch, let me thank you for this opportunity to present our concerns about human rights in Mexico. My name is Juan E. Méndez, and I am the Executive Director of Americas Watch, a division of Human Rights Watch. Human Rights Watch is a non-governmental, non-partisan organization dedicated to the promotion and defense of human rights throughout the world. Human Rights Watch and Americas Watch monitor compliance by governments with their obligations under internationally-recognized human rights standards, and mobilizes public opinion as a way to secure the enjoyment of those rights by all. As a United States-based organization, we place particular emphasis on monitoring the foreign policy of this country as well as its own domestic compliance with human rights standards, and we encourage this Congress to take an active interest in promoting observance of fundamental freedoms everywhere. In that spirit, we have frequently testified on these matters before different committees and subcommittees of this body.

#### Americas Watch position on NAFTA:

At the outset, Mr. Chairman, I would like to set forth the stand that Americas Watch has adopted on the issue of the North American Free Trade Agreement. As an organization that works on human rights, Americas Watch considers trade issues as lying outside its narrowly-defined mandate. For that reason, we take no position on the advisability of reaching such an agreement. On the other hand, we believe that the NAFTA negotiation provides an important opportunity to raise human rights issues both in the United States and in Mexico. From the start of discussions about NAFTA we urged the Bush and Salinas administrations to place human rights concerns squarely on the table. We believe that human rights violations in the United States should also be openly discussed in this context. In August 1992 and in April 1993 we have published reports on acts of violence by the U.S. Border

#### HUMAN RIGHTS WATCH OFFICERS

Robert L. Bernstein, Chair - Adnan W. DeWind, Vice Chair

Aryeh Neier, Executive Director - Kenneth Roth, Deputy Director - Holly J. Burkhalter, Washington Director

HRWH is a not-for-profit corporation

Patrol against persons suspected of illegal immigration across the Southwest border.<sup>1</sup>

The preamble of NAFTA includes language about labor rights that fall within our mandate as a human rights organization. In that respect, we are pleased that a trade agreement includes pledges to respect important rights. We are aware, however, of the fact that those stated goals will only be meaningful if they are accompanied by strong enforcement mechanisms. Such mechanisms should be incorporated into the side agreements currently under consideration. We think that a strong enforcement mechanism is one in which the victim of an act that appears to be a violation of solemn human rights commitments can bring a case before an impartial adjudicating body, to seek a serious investigation and eventually to obtain meaningful redress.

Such an impartial adjudicating body can be created in those side agreements, but we would favor a more practical course. We think that all three governments should agree to be bound by the decisions of the Inter-American Court of Human Rights, a judicial body of the Organization of American States that has established for itself a sterling reputation for human rights protection in our hemisphere. The Inter-American Court implements a multilateral treaty called the American Convention on Human Rights. Of the three NAFTA countries, only Mexico is a party to the American Convention. Canada has recommended ratification and has submitted the treaty to its provinces, in accordance with Canadian law for the ratification of treaties. The United States signed the Convention in 1977, but has yet to ratify it. Only a few days ago, speaking in Vienna to the World Conference on Human Rights, Secretary of State Warren Christopher announced that the American Convention, together with three other important human rights documents, would soon be submitted to the Senate for ratification. We welcome this announcement. It must be noted that signatories must make a special pledge to accept the compulsory jurisdiction of the Court in order to be bound by the Court's case complaint procedure. Mexico has not accepted the jurisdiction of the Court. In our view, Mexico must be persuaded to accept it, and the United States and Canada should accede to the Convention agreeing from the start to be bound by the Court's decisions. We believe that such steps would provide the best enforcement mechanism possible for the labor rights embodied in NAFTA, and they would also result in heightened protection for all other fundamental rights.

#### Human Rights in Mexico

Americas Watch began to conduct systematic research on human rights abuses in Mexico in 1989. Since that time we have published three book-length reports and numerous short analyses and articles on human rights conditions there. The first report, published in June 1990, was the first major overview of human rights conditions in Mexico by a non-governmental organization in many years. Subsequent reports have addressed prison conditions in Mexico and a series of human rights reforms initiated by the Salinas administration.

The Mexican government's response to publicity about human rights abuses has been extraordinary. Beginning about the time of the first announcement that Mexico and the United States would begin negotiations on a free trade agreement, the Mexican government

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<sup>1</sup> See Americas Watch publications *"Brutality Unchecked: Human Rights Abuses Along the U.S. Border With Mexico"* (May 1992) and *"United States, Frontier Unjustice: Human Rights Abuses Along the U.S. Border with Mexico Persist Amid Climate of Impunity"* (May 13, 1993).



instituted a series of human rights reforms including the formation of a National Human Rights Commission, the passage of human rights legislation, and the replacement of key law enforcement officials.

While the Mexican government's increased attention to human rights is readily apparent, it is more difficult to assess the extent to which human rights conditions in Mexico have improved. The government has worked hard to create the impression that it has the human rights situation under control and that improvements have been dramatic. Yet, at the same time, serious human rights problems continue.

#### **Torture and Abuse by Police and Security Forces**

Despite embarrassing publicity, nongovernmental pressure, and headline grabbing government reforms, torture and abuse by federal and state police and the country's security forces are a chronic problem.

In recent years, the most notorious human rights violator has been the Federal Judicial Police (FJP), whose agents have gotten away with torture and even murder without being prosecuted, much less convicted. Although steps have been taken to increase the pay and training of FJP members, the agency is still contaminated by corruption. Agents in the pay of drug barons are often willing to take part in killings or other serious abuses or fail to protect the public from criminal behavior of private persons.

Early this year, President Salinas appointed Jorge Carpizo as his third Attorney General. This was a significant move because Mr. Carpizo, a distinguished jurist and scholar, had made a mark as the President of the National Commission of Human Rights (CNDH) created in 1990. In two-and-a-half years, the CNDH produced serious investigations into human rights abuses, and directed more of its recommendations to the Attorney General regarding FJP violations than it did to any other governmental body. Unfortunately, it was also apparent that those recommendations were largely ignored by the previous Attorney General, Ignacio Morales Lechuga, whose office has supervisory authority over the FJP.<sup>2</sup> Mr. Carpizo's appointment gave rise to expectations that the impunity that pervades the actions of the FJP would end.

In March, Attorney General Carpizo announced that 250 of 2,200 federal drug agents, principally officers, were in collusion with drug traffickers, and revealed that case files on accused members of the *Procuraduría General de la República* (PCR - The Office of the Attorney General) have been "lost."<sup>3</sup> In spite of Mr. Carpizo's sweeping reforms at the PCR, there is evidence that the FJP (which is operationally subordinate to his office) is still plagued by corruption and human rights violations. In recent weeks, an investigation into the murder of a Roman Catholic prelate exposed such continuing problems. On May 24, 1993, the Archbishop of Guadalajara, Cardinal Juan Jesús Posadas Ocampo and six other persons were gunned down in the Guadalajara airport by the hit men of a Baja California drug cartel who were attempting to eliminate a rival. During the investigation it was revealed that several FJP agents assisted in the operation; one allegedly collected the semi-automatic weapons

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<sup>2</sup> Mr. Morales Lechuga was subsequently appointed Ambassador to France.

<sup>3</sup> Jesús Belmont Vázquez, "El Procurador Carpizo Destapa la Cloaca," *Epoca*, Mar. 8, 1993, p. 12-14.

used by the hitmen and others received bribes. The hit team left the scene aboard a commercial Aeromexico flight that was delayed 20 minutes for their boarding; it has been alleged that they boarded by showing FJP badges and that they lacked boarding passes.

Impunity in the FJP is still a serious problem. One study found that from 1989 to 1992 eight identified FJP officers were responsible for fourteen instances of torture, eight individual murders and one mass homicide, two disappearances, fourteen cases of arbitrary and illegal detention, and a variety of lesser offenses including denial of medical attention, abuse of authority, and extortion.<sup>4</sup> Some of the men were even promoted after being implicated in incidents of torture, extra-judicial executions, and homicides. As of this writing, only one of the eight has been sentenced: he is serving four years for mass homicide and becomes eligible for parole after completing two years and five months. One other is under investigation. Three of the commanders were dismissed on Feb. 11, 1992, a criminal prosecution is believed to have been initiated in one case, and the whereabouts of two other commanders are unknown. The PGR did attempt to file charges against three of these officers (sometimes on lesser offenses) but the courts dismissed the indictments. In one notorious case, apparently with ample evidence, the courts twice refused to prosecute, citing "insufficient evidence." This suggests that efforts by Mr. Carpio to fight corruption and impunity at the PGR and FJP may not be enough; a concerted effort is needed in other spheres as well, including the judiciary. The last of the eight officers included in the November 1992 study was arrested the day after the study became public and during an Americas Watch fact-finding mission in Mexico. He remains in custody, but the status of his case is unknown.

On March 1, 1993, Jesús Rioja Vázquez, a former Federal Judicial Police officer, was arrested for the February 28 murder of five people in Hermosillo, Sonora. At the time of his arrest he was working for the Federal Judicial Police commander in Hermosillo as a *madrina*, or free-lance police agent. *Madrinas* live off what they can extort during police operations. He was arrested after he went on a rampage during which he machine-gunned to death four people and ran over a fifth with his truck. Rioja Vázquez had previously been implicated in the January 1990 murders by the Federal Judicial Police of the Quijano Santoyo brothers, and a warrant for his arrest had been issued. But despite the fact that his whereabouts were well known to the FJP, no steps were taken to bring him to justice and thus prevent the February 28 murders.<sup>5</sup>

The very abuses meted out by FJP come back to haunt them when they become criminal suspects. According to their attorneys, two FJP officers arrested for allegedly being on the payroll of Joaquín Guzmán Loera (a.k.a. "El Chapo Guzmán"), the Sinaloa drug cartel leader

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<sup>4</sup> Alicia Ely-Yamin [in cooperation with the Mexican Commission for the Defense and Promotion of Human Rights] and María Teresa Jardí, "Justice Corrupted, Justice Denied: Unmasking the Untouchables of the Mexican Federal Judicial Police," New York: World Policy Institute Mexico Project, Nov. 20, 1992, p. 7-31. This study was originally submitted to the United Nations Committee Against Torture meeting in Geneva in November 1992; a version of it appeared in the magazine *Filo Rojo*, also in November, 1992. See also: Alicia Ely-Yamin, "Six Months After the U.N. Verdict: An Update on Impunity in the Mexican Federal Judicial Police," New York: World Policy Institute North America Project, Special Report #5, May 1993.

<sup>5</sup> Fernando Aguilar Juárez, "Red de complicidades con el multihomicida de Hermosillo," *Filo Rojo*, April 1993.

who was the presumed target of the Guadalajara airport shooting, were tortured in the army barracks where they are being detained.<sup>6</sup>

### Steps Taken by the Government to Combat Abuses

Since taking power in December 1988, President Carlos Salinas de Gortari has replaced two Attorneys General, replaced the chief anti-narcotics official and passed several laws aimed at improving human rights protections for persons accused of crimes. His most significant reform was the creation, in June 1990, of the National Human Rights Commission, an ombudsman agency that has reviewed and issued recommendations in hundreds of cases, a large percentage of which involve torture, homicide, illegal deprivation of liberty, and inhumane prison conditions.

In three years, the CNDH has become a very large government agency, with more than 400 employees and an impressive building in the outskirts of Mexico City. It produces detailed reports of its activities to the public, and cooperates with foreign non-governmental organizations that seek information. Mr. Jorge Madrazo, who was the chief investigator of CNDH during Mr. Carpio's tenure, became the new President when Carpio moved to the PGR. Mr. Carpio gave shape to the CNDH as the Mexican version of the Scandinavian institution of the ombudsman or the Spanish *Defensor del Pueblo*. From the start, the CNDH explicitly refused to take on complaints alleging violations of rights concerning electoral or labor matters. Those limits, for which Americas Watch sees no reasonable explanation, have now been incorporated into the Mexican Constitution. While the CNDH now has constitutional stature, its powers have been further curtailed by restricting its investigations to federal agencies. Most state governments have created their own agencies modeled after the CNDH, but their effectiveness in curbing abuses by state agents is very much dependent on the whim of local authorities.

In spite of these limitations, the CNDH produced an impressive body of investigation and legal analysis in the hundreds of cases brought to its attention. Its recommendations in the vast majority of those cases represent serious efforts to come to the truth about violations, and their regular publication is an important step in that direction. As stated earlier, implementation of each recommendation is up to other agencies or ultimately to the courts, and in some important cases the effectiveness of the scheme has been marred by the refusal of those agencies to act on CNDH's recommendations. Mr. Carpio would regularly publish reports on the status of his recommendations, thereby putting pressure on those agencies that were reluctant to act on them. Nevertheless, President Salinas must convey to all agencies under his authority that human rights violations will not be tolerated. Some clearly-stated price must be paid by those who refuse to honor the recommendations issued by the CNDH without proper cause.

Americas Watch has followed the CNDH with great interest, and is pleased to see the success of the agency in breaking the official silence that pervaded human rights violations before 1990. Nevertheless, in our opinion, the work of CNDH could be more effective. Its independence—in fact as well as in law—from all authorities must be strengthened, and it needs to be more responsive to each individual victim of human rights violations; it would

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<sup>6</sup> Alberto Aguirre and Felipe Cobián, "Nuevo Clamor: La captura del Chapo no aclara dónde están los Arellano y quiénes mataron al cardenal," *Proceso*, June 14, 1993.



help if it developed a better working relationship with Mexican organizations of civil society that strive to defend and protect human rights. The following items summarize our critique of the work of the CNDH so far:

- CNDH only examines cases where torture is well documented and physical evidence exists; it has refused to consider psychological torture to be torture;
- CNDH never recommends compensation for victims;
- CNDH does not complain when persons accused of torture are charged with lesser crimes, e.g., abuse of authority, even though this can prevent a victim from obtaining redress because, in the course of criminal proceedings, they cannot file their claim under the Federal Law to Prevent and Punish Torture;
- CNDH does complain about lack of compliance with its recommendations, but often not forcefully enough; it accepts "partial compliance" as a demonstration of good faith when often it is a tactic to get CNDH off the back of the agency that must implement the recommendation;
- From the beginning, CNDH insisted upon a mandate that did not include labor or election-related abuses; it was at CNDH's initiative that those limitations were later enshrined in the Constitution;
- CNDH also backed the creation of the state human rights commissions; this has led to the creation of a human rights bureaucracy that is so vast no human rights monitoring group can keep track of it;
- CNDH has allowed itself to become highly bureaucratized; it issues voluminous amounts of material of varied quality and value and in a way that makes it very hard to follow findings or track cases over time;
- CNDH issued equivocal recommendations on politically sensitive cases:

- the Mexican Commission of Defense and Promotion of Human Rights, A.C., and the Human Rights Center Miguel Agustín Pro, A.C., filed a complaint with the CNDH claiming the recommendation issued in the Ford Motor Company labor dispute - in which one worker was killed and many were beaten - was "insufficient for repairing the series of violations suffered by the workers." The organizations protested the failure to apprehend the suspect in the murder of a union leader (allowing the State of Mexico Judicial Police to delay the investigation) and the failure to call for a reconstruction of the crime. The investigation of an assault by 300 shock troops who attacked striking workers - which had occurred two years earlier - did not include depositions of members of the shock troops who were captured by workers, testimony from all attacked workers or from all members of the shock troops, a statement from the Ford plant manager or chief watchman who presumably facilitated the entry of the shock troops, or an explanation of the source of the Magnum 357 revolver used to murder the union leader, since such weapons are restricted for the exclusive use of the Mexican Army.

- The first recommendation issued in the murder by torture of Jesús Manuel Martínez Ruiz (Recommendation # 14/90) was judged unsatisfactory by the bereaved sister, Ana María Martínez Ruiz, who wrote the CNDH to call for additional measures. In her letter, she expressed dissatisfaction that the CNDH only named as responsible the director of the Tabasco state judicial police and had not blamed the state attorney general for responsibility in the case or for issuing false statements to federal authorities in an evident attempt to cover up the crime. She appealed for an "in-depth investigation" into the production of a false death certificate, the arbitrary arrest of César Márquez Valenzuela (an eyewitness to the murder of Martínez Ruiz who was held in prolonged detention without cause), and the profanation of her brother's body. Ms. Martínez Ruiz complained also that Commander Conrado Garrido David, of the Tabasco police, was allowed to tender his resignation from the force instead of being prosecuted, and that other members of the Judicial Police implicated in the case were not arrested. In this case, eventually both the State Attorney General and the State Governor have been forced to leave their posts.

● CNDH has improperly attacked independent human rights monitors:

- Victor Clark Alfaro, director of the Tijuana based Binational Center for Human Rights, was publicly denounced by CNDH on the grounds that he did not provide them with sources about juveniles who had been tortured.

- The Centro de Derechos Humanos Fray Bartolomé de las Casas, a Church-sponsored human rights organization in Chiapas, was accused in a CNDH recommendation on a recent case of interfering with a police investigation.

#### Human Rights Monitors:

These attacks by CNDH on human rights monitors are especially worrisome because they help create a climate of hostility to the efforts by civil society to provide effective checks on governmental abuse. Just last week, Mr. Clark was the victim of an attempt to silence his work through manipulation of legal procedures. In April 1993, the Centro Binacional published a report on "Torture and Corruption" in the judicial police of the State of Baja California that included cases of 84 persons subjected to torture. The report also alleged that drug traffickers were able to buy police credentials from corrupt officials. Although most of the report's statements were backed by the State's own Human Rights Commission, the chief of security for the State Attorney General filed charges of defamation and slander. Simultaneously, the offices of the Centro Binacional were broken into, and other members of the staff received telephone threats. Last Friday, a judge in Tijuana indicted Mr. Clark, who now faces trial. Americas Watch is not in a position to verify the accuracy of the document published by the Centro Binacional, but we are certain that the Centro Binacional carries out serious investigations and applies rigorous methodology to its work. In any event, accusations of slander, especially when pressed by a powerful public official, have a chilling effect on the exercise of freedom of expression and are inconsistent with the notion of an open society. In our view, the court should have dismissed the charges unless a *prima facie* case could be made that Mr. Clark had been malicious in accusing the public official

knowing the charges were false, or had recklessly disregarded the truth or falsehood of the assertion.<sup>7</sup>

The judicial attack on Mr. Clark is the responsibility of the authorities of the State of Baja California, governed at present by the opposition PAN party. We call on the Governor of Baja California to look into this matter and act to protect the right of human rights monitors to express themselves freely. Freedom of expression, in any event, is also the responsibility of the federal government; for that reason, we also urge President Salinas to express unequivocal support for Mr. Clark's right to monitor and publish his findings without fear of retribution, judicial or otherwise.

There have also been other attacks on monitors, especially in the countryside, as the most recent plight of the Centro Fray Bartolomé de las Casas exemplifies. Americas Watch expressed concern at a series of threats against prominent human rights lawyer María Teresa Jardí in late 1992, after she researched the lack of compliance by the PGR of CNDH recommendations regarding FJP officers found to have violated human rights (see above). Ms. Jardí filed a complaint with the U.N. Committee Against Torture, and suffered several anonymous death threats. We joined many other organizations in seeking effective protection for Ms. Jardí's life, well-being and work.

#### Judicial Protection of Human Rights:

As stated earlier, there are grounds to suspect that Mexican courts are not particularly hospitable to complaints of human rights violations committed by state and federal agents; in fact, in some notorious cases they seem to have contributed to their impunity. In addition, courts provide no protection to torture victims. Writs of *amparo* (similar to the American *mandamus*) submitted on behalf of detainees in order to examine the conditions of detention are frequently ignored. If taken seriously, *amparo* petitions could be a powerful tool to prevent torture and cruel, inhuman or degrading treatment during pre-trial arrest. In the case of Pablo Molinet, a young man accused of murder, a court ordered his release on grounds that he had been tortured but the *amparo* was not honored by the judge hearing the criminal case. In the meantime, the release order was overturned on appeal.

Courts usually require victims to prove torture. In some cases, detainees showed judges the marks of cigarette burns inflicted by police agents and judges refused to accept the evidence as torture.<sup>8</sup>

In January 1992, Mexico passed a new federal law to prevent and punish torture. Under that law, "A confession rendered before a police authority or before the *Ministerio Público* (prosecutors' office) or judicial authority will have no probative value unless in the presence of a defense (attorney) or person of trust and, when appropriate, the translator of the accused." The CNDH claims that the law has helped reduce torture, but human rights advocates and lawyers cast doubt on these claims. They allege that increasingly police are

<sup>7</sup> This approach would be consistent with U.S. law as set forth in the 1964 decision by the Supreme Court in *New York Times v. Sullivan*. It also would be in keeping with the current trend of international law on the matter of freedom of expression, as in the recent decision by the European Court of Human Rights in *Castells v. Spain*.

<sup>8</sup> Interview, Luis de la Barreda, Feb. 25, 1993. Mr. de la Barreda is the author of *La Tortura en México* and a senior member of the staff of the CNDH.



specializing in undetectable methods of torture. Without the physical evidence, neither the courts nor the CNDH will acknowledge that torture has been committed, despite the fact that Mexican and international law contemplate psychological torture and certain abuses that leave no marks as equally reprehensible.

Americas Watch believes that the new Mexican law does not go far enough in preventing torture. The U.N. Convention Against Torture, to which Mexico is a party, requires that confessions obtained under torture or cruel, inhuman or degrading treatment be excluded from evidence. All other evidence obtained as a result of torture should also be inadmissible as "the fruit of a poisonous tree." We have repeatedly urged the Mexican authorities to enact legislation making all confessions inadmissible for any purpose unless rendered before a judge in a formal hearing and under the assistance of counsel of the defendant's own choosing.

### **The Fight Against Corruption**

In early 1993, newly appointed Attorney General Jorge Carpizo instituted a series of measures aimed at ending corruption and impunity in the Federal Judicial Police. Carpizo fired one of the country's most powerful FJP commanders, Guillermo González Calderoni, and charged him with illicit enrichment as a result of his association with drug traffickers. Though González Calderoni is implicated in many more serious offenses – including egregious human rights abuses so far the PGR has only gathered evidence on illicit enrichment. González Calderoni has apparently fled to the United States, and Carpizo's efforts to seek his extradition have met the obstacle that illicit enrichment is not a crime contemplated in U.S. law, and therefore not extraditable. We urge Mr. Carpizo to gather evidence on crimes for which extradition is available. Further, we believe the U.S. government should look into allegations of González Calderón's involvement in egregious human rights violations and, if proven, deport him.

In the wake of the murder of Cardinal Posadas, Carpizo has also revealed that 250 of 2,200 federal agents have been identified as collaborators of drug-traffickers, and that a high number of PGR agents are suspected of protecting drug traffickers. In March, the Attorney General pledged that investigations of suspect officers will be pursued "to their final consequences." In another highly significant move, Carpizo announced that he will crack down on Federal Judicial Police that employ *madrinas*. Carpizo has announced that a new drug-busting institute is being set up, with its own detective and police force, in an effort to take away drug interdiction from the FJP. Also as a result of the Guadalajara airport incident, 67 FJP agents (including 13 commanders) have been fired. More recently, it has been announced that the entire FJP force based in the state of Sinaloa has also been fired. These drastic measures exemplify the extent to which drug traffickers have infiltrated and corrupted Mexico's law enforcement bodies. They are sweeping in nature; Americas Watch hopes that they will also be effective.

### **Political Rights Violations and Interference with Civil Society**

The Mexican government attempts to assert control over individuals and institutions that criticize or oppose Mexican government policies. Typically, the first line of defense of government against the formation of independent organizations is to offer incentives for joining, or becoming, official organizations. The panoply of groups that operate as PRI-affiliated or government-controlled bodies reaches into every sector of society and include

labor unions and confederations, associations of self-employed workers such as taxi drivers and market vendors, peasant leagues, and businessmen's chambers. Successive PRI regimes have effectively used semi-official organizations as conduits for channeling important benefits to Mexico's underprivileged. For example, PRI-oriented labor unions have a say in which workers are awarded access to government-sponsored, low-cost housing, and peasant leagues are consulted on the need for farm credits. Individuals are also offered a variety of incentives including government jobs, lucrative consulting opportunities, or promises of government action in one area in exchange for silence about another.

Those who refuse or who insist on creating truly independent organizations of civil society are sometimes subjected to threats and other forms of harassment. A wide repertoire of instruments of intimidation is available, including wiretaps, deploying plainclothes police to follow individuals, having officials transmit scary warnings to activists or their advisors. Finally, as a last resort, activists may be jailed, often on dubious charges, or in extreme cases may be subjected to physical violence or killed.

It must be stated, however, that since Mr. Salinas' inauguration, the climate for independent organizations has improved, and Mexicans have been more willing to participate in public affairs through channels of their own creation. Nonetheless, with the burgeoning of independent activism during the Salinas administration, civic groups have reported a wide range of incidents of what they term "cloaked repression." These include strong threats or intimidating actions directed at human rights monitors, lawyers and other defenders of popular movements, civic movement activists and opposition party members.

As stated earlier, prominent human rights activist María Teresa Jardí received three anonymous written death threats in October, 1992. These were the first publicly disclosed death threats since political columnists Jorge G. Castañeda and Rodolfo F. Peña were the targets of death threats in June 1990. Jardí's death threats, and those suffered more recently by the staff of the Centro Binacional, are a frightening reminder to human rights monitors throughout the country of the dangers that accompany their work.

Two labor lawyers for oil workers who protested lay-offs were arrested on October 21, 1992. The lawyers, Guadalupe Marín Sandoval and Julio Guillén Solís, were jailed on charges of fraud, use of false documents and perjury that dated from 1989 but which were not pressed against them until three years later, at precisely the time when workers staged a labor protest against the national oil monopoly, Petróleos Mexicanos. The charges stem from the fact that an oil company check made out to a worker appeared in the account of Ms. Marín. The lawyers were released after being detained for one month. Guillén was absolved of all charges, and Marín was convicted of fraud and absolved of the other two charges; her case will be appealed.

According to press accounts, Carlos Enrique López Barrios, a lawyer defending Tzotzil Indians in Chiapas state, was beaten all over his body on April 27, 1993, by three unidentified men who seized the lawyer's appointment book and identification cards. The beating occurred while the defense group, Abogados y Asesores Asociados, of which López Barrios is a member, was conducting its defense of Tzotzil Indians from San Isidro el Ocotal community who are accused of the recent killing of two soldiers.

Harassment of the press is an ongoing problem. Carlos Menéndez Navarrete, director of the independent newspaper *Diario de Yucatán*, was the target of attacks after his newspaper criticized the Yucatán state government's brutal suppression of a peasant

demonstration. Last July 21, unidentified people pelted his house with stones, attempted to pry open his front door, and damaged two automobiles. The following week a bomb was found on the sidewalk, in front of the premises of his newspaper. These crimes remain unsolved.

An unusual campaign of harassment was unleashed in 1992 to block distribution of a new newspaper directed at working class readers and independent popular organizations. *Corre La Voz* newspaper is highly critical of government actions, and although some of its staff sympathize with the opposition PRD party, the paper is independent of all political parties.<sup>9</sup> From March 1992 through April 1993, distributors of *Corre La Voz* were detained 300 times.<sup>10</sup> The detentions continued through June, 1993; in fact, five vendors of *Corre La Voz* were detained on a single day, June 12. Many of the vendors have been detained numerous times. In Mexico City, the newspaper is distributed almost exclusively on the subway which serves an estimated 4 million lower income passengers daily. The typical pattern of detention is that men dressed in uniforms who identify themselves as subway security guards arrest the vendors and hold them incommunicado for up to three hours in lock-up cells (*separos*) that exist in each subway station. The newspaper vendors are then turned over to traffic policemen who take them to the Cuauhtémoc borough police station where a judge sentences them to 36 hours in jail or a fine of 420 Nuevos Pesos, the equivalent of \$137. In the course of this process, the detainees are not asked to testify before judicial authorities and they are not told the charges against them. Questioned about the reasons for the detentions, authorities say they are violating regulations that control street commerce. "It is a war of attrition. They (the authorities) involve you in a wearing dynamic of seeking the (vendor's) release," says the paper's director general. Distribution of the newspaper in the interior is also blocked, although by other means. From its Mexico City headquarters, *Corre La Voz* is shipped to the provinces by bus company messenger services. The packages shipped to Morelia, Michoacán, and Zihuatanejo, Guerrero, never reach the distributors, reports Juan Solís, distribution director of *Corre La Voz*.<sup>11</sup> Upon investigation of the distribution blockade in Michoacán, employees of *Corre La Voz* found stacks of the newspaper piled up in a storage room of the Estrella Blanca bus line.

#### **Election Observation and Persecution of Opposition Activists:**

Traditionally, the PRI and the Mexican Government have refused to accept the notion that elections should be subjected to any form of outside monitoring. This has become an important issue because the authorities and mechanisms trusted with ensuring the fairness and freedom of elections have been woefully inadequate. In the only cases adjudicated against Mexico in its history, the Inter-American Commission on Human Rights found that the conditions for the adjudication of election-related complaints in two states fell short of Mexico's obligations under Article 23 of the American Convention on Human Rights to provide for political participation through regular, "authentic" elections.<sup>12</sup> Since then, Mexico has embarked on far-reaching electoral reforms, approved by PRI and PAN

<sup>9</sup> Telephone interview, Carolina Verduzco, Director General, *Corre La Voz*, June 14, 1993.

<sup>10</sup> Carolina Verduzco, Id.; Letter to editor signed by 43 journalists, *La Jornada*, June 4, 1993.

<sup>11</sup> Interview, June 14, 1993.

<sup>12</sup> IACHR-OAS, *Annual Report 1989-90*, Washington, DC, 1990, pp.101-128.



representations in Congress but rejected by the PRD opposition. Significantly, the process has given rise to efforts by independent groups to monitor elections, and those efforts have sometimes been supported by international electoral observers. The official position of the Mexican government is that it allows domestic Mexican efforts, as well as visits by international observers at election time, but it does not recognize their legitimacy to pronounce on the freedom or fairness of elections.<sup>13</sup>

Activists involved in organizing election observation efforts and relatives of election observers are frequent victims of attacks or intimidation. On September 13, 1992, Morelos Marx Madrigal Lachina was kidnapped in Mexico City and beaten and interrogated for three days. Madrigal Lachina had coordinated independent monitoring of the July 12 gubernatorial race in Michoacán. His interrogators asked about his ties to the PRD party and the non-partisan Convergence of Civil Organisms for Democracy which had coordinated independent monitoring of the election in which PRI faced a strong challenge from the PRD party.

On the evening of Nov. 6, 1992, Tatiana Clouthier, organizer of an impartial group of election observers, was followed and nearly run off the highway by men in a car with smoked windows outside Culiacán, Sinaloa. The incident occurred 36 hours before the Nov. 8 state gubernatorial and municipal elections in which 2,500 impartial observers organized by Clouthier would be deployed in a so-called "Army for Democracy" to report on election irregularities. Clouthier denounced the incident as an attack and an intimidation, and told reporters that prior to the high-speed chase she had received threatening calls.<sup>14</sup> At a news conference that same day, she expressed suspicion about the circumstances of the October 1, 1989 highway death of her father, Manuel Clouthier, the PAN challenger in the 1988 presidential elections, and called on President Salinas to reopen the investigation into his death.

In San Luis Potosí, election observers were the victims of intimidation while monitoring the tense gubernatorial race that coincided with federal elections on August 18, 1991. Observers deployed by the Mexican Human Rights Academy were expelled from voting booths in Ciudad Valles and in Río Verde, where two observers were threatened with knives by polling officials. Voting officials drove after another Academy observer in their truck in the town of San Martín Chalchicuatl. Verónica Ortiz and a team of four other observers were followed in the city of San Luis Potosí by five men equipped with walkie talkies who were travelling in a white car with no license plates. Later, a second unmarked car carrying five men with walkie talkies also began pursuing the observers. When the observers pulled up to the Potosino Human Rights Center to report their findings, their car was blocked on the narrow downtown street by the two unmarked cars which stopped next to and behind the observers. In Xilitla, Ortiz was threatened that something would happen if she didn't leave the area where election observation efforts were under way.<sup>15</sup>

Attacks against election observers continued in 1993. The office of Guillermo Vela Román, leader of the non-partisan Frente Cívico Familiar, was broken into and a new

<sup>13</sup> Interview, Lic. Roberta Lajous, Secretary for International Relations for the PRI, Washington, June 22, 1993.

<sup>14</sup> Coello, Juan José, and Olivier Acuña, "Denuncia ataque hija de Clouthier," *El Norte*, Nov. 8, 1992.

<sup>15</sup> Interview, Verónica Ortiz, November 12, 1992.

computer valued at \$10,000 was stolen on the night of April 25, 1993.<sup>16</sup> The theft occurred on the same day that Vela's independent organization, along with opposition political parties, ran a plebiscite to contest the state government's initiative to delay state elections and have the PRI-dominated state congress appoint an interim governor. The vote in the unofficial plebiscite was a resounding rejection of the official initiative, with more than 90 percent of the ballots cast calling for an open election to choose the interim governor.

The government has recently raised the risks of participating in protests against fraud by applying federal charges against protestors. In November 1992, following tense elections in Tamaulipas state, the state police charged nine opposition militants of the PARM, PAN and PRD parties with terrorism for their involvement in post-electoral conflicts. In a *melée* protesting electoral fraud, an election commission office was set on fire and ballots were burned in the border city of Matamoros. However, the individuals responsible for setting the fire were never arrested, and the Deputy Attorney General for the Northern Region, Antonio García Torres, later withdrew the accusation of terrorism.<sup>17</sup> The federal crime of terrorism can carry a prison term of two to 40 years against anyone found guilty of using "any violent means (in) acts against people, things or services to the public" (*Código Penal*, Título Primero: Delitos contra la seguridad de la Nación, Capítulo VI: Terrorismo, Art. 139).

Violence has taken its heaviest toll among political activists. The PRD claims that 230 sympathizers and activists of the party and its predecessor, the National Democratic Front coalition, have been killed for political reasons since 1988. This figure includes many cases of persons killed in riots and disturbances with rival groups after protracted occupations and demonstrations protesting alleged electoral fraud. In addition, government officials claim that many of those included in the PRD's list have only marginal affiliation with the opposition party and that the political motivation of their murder is far from clear. Even so, only a handful of these cases have been solved.

One of the most notorious cases of persecution of political dissidents, the December 16, 1988 disappearance of José Ramón García Gómez, a leader of the leftist Revolutionary Workers Party in Cuautla, Morelos, has finally been solved. The CNDH produced two recommendations, and subsequently the Morelos State Attorney General appointed a Special Prosecutor for the case. He selected attorney Daniel Estrella Valenzuela, a member of García Gómez's party. On April 14, 1993, Estrella issued a report establishing that the political leader was kidnapped by a group of policemen, who later murdered him, although his body has yet to be found. The three police agents are in custody; a fourth person, implicated by the CNDH, has not been arrested.<sup>18</sup>

Peaceful protests are frequently dispersed with excessive use of force. On May 23, 1992, in Villahermosa, Tabasco, more than 250 riot squad police violently dispersed a demonstration of workers fired by Pemex who had surrounded the regional personnel offices

<sup>16</sup> Sánchez, Jesús and Renato Flores, "Apoya el PRI Otro Interinato en Yucatán; Habrá Resistencia Civil en Toda la Entidad: PAN," *El Financiero*, April 27, 1993.

<sup>17</sup> López, Martha Olivia, "Desisten de acusar de terrorismo a 9 opositores en Tamaulipas," *La Jornada*, Dec. 20, 1992.

<sup>18</sup> CNDH, *Newsletter*, No. 2, April 1993.

of the oil monopoly. Dozens of workers were beaten with billy clubs. On January 11, 1991, in Tabasco state, members of the dissident *Movimiento Popular Priista* were violently dispersed by members of the state riot squad, *Escalón Operativo*, during their march from Villahermosa to Cárdenas. Three men who suffered serious injury later filed a grievance with the CNDH. Several of the marchers were briefly arrested by the riot police who abandoned them at a site 250 kilometers away from where they were picked up.<sup>19</sup>

#### **Rural Violence:**

I understand my colleague Eric Rosenthal, of Minnesota Advocates for Human Rights, will present a detailed report of the recent incidents in San Isidro de Ocotal, Chiapas, a case which we are also monitoring. As stated earlier in this testimony, Americas Watch is concerned that the investigation of this case has resulted in an unwarranted attack by CNDH on a respected human rights organization, the *Centro de Derechos Humanos Fray Bartolomé de las Casas*. Even more serious verbal and written attacks against the organization and against Bishop Samuel Ruiz have taken place in Chiapas in recent weeks.

The case originates with the disappearance and presumed murder of two military officers on March 20, 1993. In reaction, local contingents of the Mexican Army were sent to San Isidro and to the town of Mititón; police officers later conducted investigations as well. Investigations and military raids continued for about six weeks. Many Tzotzil Indians were arrested arbitrarily and some were tortured during interrogation. There were also reports of robbery and destruction of property. Americas Watch feels that these actions (in which the CNDH has already found violations of the Tzotziles' rights) served no other purpose than to intimidate this poor and powerless community. Local powers in Chiapas have reacted negatively to actions to protect the rights of the Tzotziles, labeling them obstructions of the investigations. A climate has been created that is very dangerous to human rights monitors, and unfortunately, CNDH has contributed to it.

#### **Conclusion:**

Americas Watch welcomes the attention on human rights in Mexico that the discussion of NAFTA has generated. A healthy focus on human rights in the United States is also beginning to take shape in Mexico as a result of this debate. We hope that the result is an honest and frank discussion of the human rights situation in all countries involved, and a common search for ways in which all can contribute to greater and more effective enjoyment of fundamental freedoms. We are particularly interested in stimulating debate about internationally-agreed mechanisms of protection of rights. We would also like to see that NAFTA becomes a vehicle to promote two aspects of democracy that we feel are at least as important as periodic free and fair elections. One is the strengthening of the rule of law, including an end to the cycle of impunity for abuses committed by government agents, and the ability of citizens to rely on state institutions to protect them and to provide them with fair access to justice when they seek redress for wrongs committed against them. The

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<sup>19</sup> *Comité de Derechos Humanos de Tabasco, II Informe: Abusos de Autoridad e Impunidad en Tabasco*, July 1992, p. 16-17, 23.



second one is the generation of a vibrant, strong, independent civil society, capable of creating autonomous organizations to involve citizens in all affairs of public interest, that would provide effective checks on the abuse of governmental power. Thank you for this opportunity to present our views.

**STATEMENT OF JUAN MANUEL ARRIGUNAGA**

**DEPUTY DIRECTOR, FAMILY CIVIC COALITION,  
(FRENTE CIVICO FAMILIAR)**

**MERIDA, YUCATAN, MEXICO**

**BEFORE THE COMMITTEE ON SMALL BUSINESS**

**U.S. HOUSE OF REPRESENTATIVES**

**WASHINGTON, D.C., 29 JUNE 1993**

**Mr. John LaFalce**  
**Chairman**  
**Congress of the United States**  
**House of Representatives**  
**Committee on Small Business**  
**2361 Rayburn House Office Building**  
**Washington, DC 20515-6315.**

Last week we came to the Organization of American States, to formally sue the Mexican Government before the Interamerican Commission of Human Rights for the restrictions of the Citizen's Political Rights with the CEDEY, which is the Electoral Law in Yucatan.

This law leaves the total control of the elections on the Government hands:

1) They control the Padrón Electoral (list of voters). There is no open access to verify the information

2) They actually make the ID cards needed to vote.

3) They have the majority in all the electoral councils: State Council, District Council and Municipal Council. These councils organize, control and watch over the process. At the end they determine temporarily who win.

4) They nominate the members of the Tribunal Electoral, whose responsibility is to resolve on irregularities in the electoral process. Anyway, their resolutions are not definitive (resolutions can be disregarded or modified by the Colegio Electoral formed by the candidates presumed winners).

5) Finally, the Colegio Electoral determine the winners.

The citizens don't have any legal defense in the event of a fraud:

1) The Tribunal Electoral is useless for the reasons given above.

2) The National Commission of Human Rights don't mediate in political rights' violations (under the 102 Article of the Mexican Constitution).



3) The National Congress is totally controled by the official party's majority.

4) Our civil and judicial laws don't include penalties for political rights' violations.

Under these conditions is easy for the government to manipulated the elections to his convenience.

Some of the irregularities we have seen are:

- "Crazy Mouse".- they change the places where the people are to vote.
- "Razor and Inflation".- they take people out of the list of voters (normally members of the opposition parties) and put other invented names to be used by their people.
- "Tacos".- they give their supporters a roll of votes, all marked for the PRI and the voters put them into the amphore.
- "Carrousell".- they gather 20 or 30 people in trucks and take them to vote in many places.
- "Amphore robbery".- they gather groups of 20 or 30 youngsters who go to the voting places to steel the amphores.
- "Changing the results".- if in spite of all these "tricks" they lose they simply change the results in the final certificate.
- We have noticed that in places where the opposition couldn't have a representative, the % of voters increases and all for the official party.

In November 1993, we are to elect our next governor. In April the Congress of Yucatan ( 18 out of 25 members are from the PRI) signed a decret to establish that the next governor would last for only 18 months because it is important (that's what they said) that the governor be elected after the election of the President in 1994, and the Congress would nominate the governor for this period. This decret broke the Mexican Constitution.

The opposition parties, the civilian organizations, business organizations and citizens reacted immediately. The Mayor of Merida (Ana Rosa Payan, from the PAN) convoked the people to a referendum. We were invited to be witnesses of the process. 43,000 people responded and more than 96% of them rejected the decret.

The government went back a little and the Congress signed a new decret to establish that the people will elect the 18 months governor.

It seems that the intention of all this was to eliminate the PAN's best candidate Ana Rosa Payan, Mayor of Merida for the next election or, if she decides to run for it, to enshorten her period as governess.

Apparently the decisions for all this were made in Mexico City under the responsibility of the President.

We are very concerned about the importance that the Mexican Government has given to the economic issues in detriment of political matters. We are convinced that there can't be real social progress without a democratic system

Mérida, Yucatán, México, Junio 28 1993.

Juan Manuel Arrigunaga Juanes  
Member of the Frente Cívico Familiar.

## FRENTE CIVICO FAMILIAR

A group of citizens decided in a party, in January 1988, to begin an organization to work for democracy and human rights instead of complaining for the abuses of the Government.

Since then, the FCF has promoted civilian and pacific actions against:

- Illegal and unexplained raises of the fares for government services, such as electricity, telephone and water.

- Electoral frauds, making big campaigns to convince the people of importance of voting and defending their votes. We have also participated as observers of electoral processes in 1988, 1990, 1991 in Yucatan. And in other states like Nuevo Leon in 1991, Michoacan 1992, Sinaloa 1992, San Luis Potosi 1993.

- Antidemocratic laws, specially theCodigo Electoral del Estado de Yucatan (CEDEY), pressing the government to change the law and participating in the process (without success).

- Other Human Rights like pressing the government to free political prisoners.

Today, FCF has expanded to other cities in the Peninsula of Yucatan: Tizimin, Valladolid, Ticul, Cancun, Chetumal, Ciudad del Carmen.

We are part of a National Democratic Movement called "Movimiento Ciudadano por la Democracia", along with other 150 no-governmental organizations throughout Mexico.





Testimony  
Concerning Human Rights in Mexico  
Submitted by  
Minnesota Advocates for Human Rights  
to the Small Business Committee  
of the United States House of Representatives

June 29, 1993

Mr. Chairman, members of the Committee, I appreciate this opportunity to testify on the human rights situation in Mexico.

My name is Eric Rosenthal. I am a legal fellow at Minnesota Advocates for Human Rights, an international human rights organization based in Minneapolis. Minnesota Advocates is a membership organization, made up of approximately 1,000 attorneys and other human rights advocates in Minnesota and other states. Our members are actively involved in documenting human rights violations and working to bring about compliance with human rights treaties within the United States and around the world. Minnesota Advocates for human rights has extensively documented human rights conditions in Mexico since 1989, and we will soon be issuing our fifth report on Mexico.<sup>1</sup> In today's testimony I will draw from the work of many of our very dedicated and knowledgeable members.

In our December 1992 report, *No Double Standards in International Law* (which I append to this written testimony), Minnesota Advocates calls on the United States, Canada, and Mexico to link the adoption of a North American trade accord with a mechanism for enforcing international human rights throughout this hemisphere. Such a mechanism already exists through the Inter-American system of human rights. To become a full member in this system, members of the Organization of American States (OAS) must ratify the American Convention on Human Rights. Parties to the convention may then opt to accept the jurisdiction of the Inter-American Court of Human Rights so that it can issue binding decisions under the Convention. To date, Mexico has ratified the American Convention but the United States and Canada have not. None of the three countries has yet accepted the full jurisdiction of the Inter-American Court.

<sup>1</sup> *No Double Standards in International Law: Linkage of NAFTA with hemispheric system of human rights enforcement needed - Canada, Mexico & the United States must become full partners in the Inter-American System of Human Rights*, (December 1992); *Conquest Continued: Disregard for Human and Indigenous Rights in the Mexican State of Chiapas, 1992*; *The Homicide of Dr. Victor Manuel Oropeza Contreras: A Case Study of Failed Human Rights Reforms in Mexico, 1991*; and *Paper Protection: Human Rights Violations and the Mexican Criminal Justice System, 1990*.

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Minnesota Advocates welcomes the recent position taken by Secretary of State Warren Christopher to press for ratification of the American Convention in the Senate, and we urge you to do all you can to support ratification by your Senate Colleagues.

Based on our review of human rights conditions in Mexico, Minnesota Advocates finds that an independent enforcement mechanism is needed to ensure human rights enforcement for Mexican citizens. Unfortunately, Mexico's political and judicial systems are riddled with corruption, and its criminal justice system is built on some of the most severe forms of human rights abuses, including the systematic use of torture and a "culture of impunity" for human rights abusers.

Minnesota Advocates takes no position on the trade accord itself. But one thing is clear from our review of the human rights situation in Mexico: rights established under a trade accord - or under supplemental agreements designed to protect labor rights or the environment - will not be fairly and consistently enforced so long as individuals are at risk of abuse when they stand up for their rights against the government. Nor will there be effective remedies for the violation of rights protected by a legal system that does not respect or enforce its own law.

A forthcoming report by Minnesota Advocates for Human Rights, *Civilians at Risk: Military and Police Abuses in the Mexican Countryside*, examines the role of the Mexican military and police in human rights abuses that take place in the course of law enforcement activities in rural areas of Mexico. This report is the product of a seven-month study by Minnesota Advocates, which has included on-site investigation in Southwestern Chihuahua last November and December and in the Southern State of Chiapas last month. The fact-finding team, made up of attorneys Daniel Gardts, Rachel Kaplan, Sara DeCasse, next year's Minnesota Advocates legal fellow, and myself, interviewed victims of human rights abuse, human rights advocates, and representatives of the Mexican military and government.

*Civilians at Risk* documents a series of abuses by the Mexican military in the region of Saborigame, in the mountains of Southwestern Chihuahua in October 1992. It also documents abuses that took place in Chiapas - in and around the village of San Isidro in March and April and in the region of Ocosingo in May of 1993.

In each of these three incidents, the military took collective action against large numbers of civilians in response to the alleged killing of soldiers. The Constitution of Mexico categorically prohibits the military from involvement in law enforcement activity among the civilian population. Warrants for the detention of civilians and the search of homes may only be

granted to civilian authorities. The only circumstances in which soldiers may detain a civilians is when they catch a violation of the law "in flagrante" and must act immediately because police cannot be called in on time.

There is a growing pattern of abuses by the military in which the residents of whole villages are detained and homes are searched, actions completely outside the bounds of Mexican law. Our report finds that this lawless activity is increasingly conducted as a matter of official Government policy. Many of the most serious abuses have been tolerated by the Mexican government's own National Human Rights Commission, the CNDH.

The stated reason in each case for military action against civilians is that soldiers are engaged in the investigation of the killing of fellow soldiers. Yet the activities for which the military is authorized - monitoring drug trafficking, destroying plantations of drugs, searching for guerrillas along the border with Guatemala - are inherently dangerous activities that may lead to soldiers being fired upon. Yet these circumstances do not justify the suspension of the rights of civilians under international human rights law. So long as the military is allowed to conduct arbitrary detentions of civilians, and to operate outside the bounds of Mexican law, the military poses danger to the rights of the civilian population.

The threat of ongoing abuses by the Mexican military is particularly great in rural areas inhabited by indigenous people. As documented by Minnesota Advocates in the past, indigenous people in remote areas are particularly vulnerable to discrimination and abuse and have few independent institutions to advocate for their rights.

In Chiapas, the human rights organization that documented the military abuses, the *Centro de Derechos Humanos Fray Bartolomé de las Casas*, has come under severe criticism by the authorities. The military claims that the *Centro Fray Bartolomé's* reports are lies and has reported to the National Human Rights Commission that the *Centro* advised witnesses to falsify testimony. Yet the military has presented no evidence of wrongdoing by this organization. On the contrary, Minnesota Advocates independently corroborates most of the findings of the *Centro Fray Bartolomé* and finds that their reports are thorough and responsible.

The most serious human rights violations documented in civilians at risk regard the crime of torture. In Chihuahua, Minnesota Advocates interviewed three individuals who reported being tortured by soldiers. In Chiapas, we interviewed another three who reported being tortured by the police. The most serious and systematic use of torture documented in the report was perpetrated by agents of the police. To this extent, the report confirms what has now been well documented by the U.S. Department of State, the U.N. Committee Against Torture and other

international human rights organizations such as Human Rights Watch and Amnesty International - that torture is used by the police in the course of interrogations. Perhaps more disturbing, a "culture of impunity" exists in Mexico: those who engage in torture can count on the fact that they will not be prosecuted.

In almost every case of torture documented in our report, the Mexican Government's National Human Rights Commission (the CNDH) received similar reports of torture. Yet the CNDH did not call for the prosecution of torture in a single case. To date, there have been no prosecutions for torture in any of the cases we have documented.

I would like to tell you now about the cases the Minnesota Advocates recently documented in Chiapas.

#### San Isidro & Mitzitón

On March 20, 1993, Air Force Captain Marco Antonio Romero Villaiba and Infantry Lieutenant Porfirio Millán Pimental disappeared as they were traveling, off-duty, in the region of San Isidro el Ocotal. On March 28, severely charred remains were found in a slow burning pile of rubbish near the village of San Isidro, and the military concluded that these were the bodies of the murdered soldiers.

Late in the day on March 28 and early on March 29, some 400 soldiers in the presence of a handful of policemen entered San Isidro. Soldiers stood on guard as the entire population was detained and every home was searched. Residents of the village reported to the authorities that they were beaten and threatened by soldiers at this time. At the same time, approximately 40 to 50 soldiers and police entered the nearby village of Mitzitón.

Nine men were arrested in San Isidro and turned over to police authorities in San Cristóbal. According to reports by Centro Fray Bartolomé, four of the detainees were taken to an abandoned prison and tortured by police. Minnesota Advocates interviewed one of these four, Rafael Heredia López, from the village of Mitzitón, who corroborated these allegations. He said he was told he would be shot unless he confessed to the crime of killing the soldiers. Then he was asked about who was guilty of the crime in San Isidro. One man put a gun to his head and pulled the trigger, but the gun turned out to be empty.

Mr. Heredia López reported that he was further tortured during his interrogation. He said he was placed in a tire on the floor, had his head pulled back and a block of wood placed in his mouth. A cloth was placed over his head and water was poured over his face to create the sensation of drowning.

Minnesota Advocates is concerned that the domestic investigation of these incidents by the CNDH was inadequate and misleading. The CNDH report finds that the warrantless



detentions of the civilians from Mitzitón and San Isidro were illegal. Despite the fact that hundreds of soldiers stood guard, however, the CNDH absolves the military for any responsibility for these detentions. Although the CNDH report acknowledges receiving reports of physical brutality by soldiers and police, as well as death threats during interrogation, it concludes that these reports were untrue and that no torture took place. The CNDH report makes no mention of allegations of water torture.

As evidence that torture did not take place, the CNDH cites a medical report ordered by police on the detainees before they were released from detention. The medical report apparently showed no indications of torture on the bodies of the detainees. Yet there is no reason to believe that either the water torture or the death threats would show up in a report of this kind.

The detainees from San Isidro and Mitzitón were released after a few days. But on April 25, according to the Centro Fray Bartolomé, some 200 police returned to San Isidro and detained 17 more residents. Minnesota Advocates interviewed two residents of San Isidro who corroborated this report. In addition, they reported being subject to water torture by the police. Their accounts closely match that of Rafael Heredia López regarding his torture the month before.

According to the Centro Fray Bartolomé, the 17 detainees were turned over by the police to the federal authorities after their interrogations. The federal authorities reportedly had no grounds for keeping them detained and released them without delay.

Police reportedly returned again to San Isidro on May 8. Minnesota Advocates interviewed a resident of a nearby village who saw 47 vehicles with police in them go up to San Isidro. By this time, the entire population of San Isidro had fled and the police found the village deserted. When the Minnesota Advocates team visited San Isidro on May 25, we found the village still entirely deserted. We interviewed two former residents who told us that everyone fled the town for fear of future acts of reprisal by the police or military.

#### Ocosingo

On May 24, while I was in Chiapas with the Minnesota Advocates' fact-finding team, we learned that soldiers had moved on a number of villages that day in the region of Ocosingo. On May 25, we travelled across the State of Chiapas and visited one of those villages.

We arrived in Ocosingo late in the day on May 25 and were told that the most recent military actions had taken place the day before in the towns of Pataté Viejo and Pataté Nuevo. We arrived in Pataté Nuevo just before dusk. The village, made up of some 60 families, was almost entirely deserted. The only

lights we saw were coming from the church at the far end of town. A military vehicle parked in front of the church sped off when we arrived.

We found some fifty or sixty women and children packed into the church. A priest and a few other men were there, but they told us that most of the men had fled the village entirely. Those in the church told us that they were afraid to go outside so long as soldiers remained in the area.

According to the people in the church, hundreds of soldiers had entered the town of Patatá Viejo at about 9 am the day before. Some people heard gunshots from the hills earlier that day, but there had been no shooting near the village. The soldiers gathered the entire population of the village together and held them on the basketball court from 10 am to noon. They took one woman from each household, made her open up her home, and so conducted a house-to-house search of the entire village. In eight of the homes, they found knives or guns. According to those we interviewed, the heaviest weapons found were .22 caliber rifles, which are not prohibited under Mexican law. The soldiers then took away the head of each household in which these knives or guns were found.

According to the villagers, the men taken away had all been detained with the others on the basketball court, and none of them were armed. The residents of the village said that soldiers had interrogated them about guerrilla activity in the region, but when they were taken away the villagers had no idea that these men were being charged with this crime. The wife of one detainee told us that soldiers told her that her husband would only be taken away for fifteen minutes of questioning. By 10 pm that evening, almost 36 hours after he was detained, she still did not know where her husband was.

None of the villagers knew where the detainees were being held. But they told us that the soldiers were still up on the hillside, so we decided to go up the hill to investigate.

On the road up the hill, we were stopped by a military road block. We asked to see General Menchaca, commander of the 31st military zone based in the area, and we were waived through. At the top of the hill, at a PEMEX petroleum drilling facility, we found the military encampment. There were hundreds of soldiers there; many of them were armed with automatic weapons and had packs on their backs and looked like they were ready to move. I counted 22 personnel carriers and a few large trucks.

At the encampment we asked again for General Menchaca, and we were again waived in. Inside the camp, we were met not only by General Menchaca, but by at least two other Generals. One of them introduced himself as General Miguel Angel Godínez, a three star general and commander of the 7th military region of Mexico.

General Godínez would not tell us the details about the events that had happened in Pataté, but he confirmed that soldiers under his command had detained not eight but ten people the day before (Minnesota Advocates later learned that two Guatemalans had been detained in a nearby area). General Godínez also said that the detainees had been turned over to federal authorities and were being charged with the possession of illegal weapons. General Godínez denied any illegal activity on the part of the military, and he said that the detainees were caught "in flagrante" in violation of the law.

The story about the detentions changed substantially in official accounts released to the Mexican press thereafter. An official from the Federal Attorney General's office in Chiapas was quoted by the Mexican newspaper La Jornada on May 27 as stating that the military "confiscated 11 weapons of different calibers, cartridges, and three civil band radios, as well as notes and subversive propaganda about Guatemalan guerilla tactics." On May 27, for the first time, the military also reported that soldiers had been fired upon on May 22 and 23 and that one soldier had been killed. As of May 27, the detainees were reportedly charged with attacking soldiers and homicide.

On May 27 and May 28, La Jornada reported ongoing and widespread military action against guerillas in the region, including reports that explosive devices were thrown from helicopters in areas populated by civilians.

A statement by the Secretary of Defense of Mexico on May 31, quoted in the Mexican newsmagazine Proceso, later stated that the military actions were in response to guerilla activities in the region. According to the statement by the Secretary of Defense, there was a shootout between soldiers and guerilla in a remote area of the region of Ocosingo. According to the report, one "unidentified civilian" was killed in this shootout. As of May 31, the detainees were reportedly also charged with treason.

The charges of treason against the eight detainees from Pataté raise grave human rights concerns. Charges of treason in Mexico are very serious. The Constitution of Mexico prohibits the death penalty for most crimes except treason. With these serious charges hanging over their heads, there are reasons to doubt that the eight detainees from Pataté were involved with an earlier shootout, if such an event took place. According to the residents of Pataté, the soldiers did not come into the town looking for specific individuals - the breadth of their search suggests that they were looking for whatever they could find. The individuals taken were those who happened to have .22 caliber rifles in their homes. The increasing escalation of the crimes for which the detainees were charged is also suspicious. General Godínez made no mention of attacks upon soldiers when Minnesota Advocates encountered him outside of Pataté - all he mentioned was the much less serious charges of possessing illegal weapons. General Godínez's earlier version is closer to the account

provided by the residents of Pataté.

Even if the military account is correct, however, the detentions and searches in Pataté were still clearly illegal. According to military accounts, the soldiers were fired upon on May 22 and May 23. Soldiers did not enter Pataté until May 24. There was time for the military to call on the police to arrest individuals hiding in Pataté, and therefore the arrest could not have been justified by "en flagrante delito."

The National Human Rights Commission considered a factual situation very much like this in San Isidro when it considered whether the warrantless detentions on March 28 could be considered legal. The CNDH report on San Isidro concludes that it was even illegal for the police to have detained civilians without a warrant because the killing had taken place days before.

#### Escalating Military Violations

In the events documented by Minnesota Advocates in the regions of Baborigame, San Isidro, and Ocosingo, military involvement in the illegal detention of civilians is progressively more systematic and openly tolerated as official policy. After the abuses in Baborigame in the State of Chiuhuahua were documented by human rights groups in November 1993, the Secretary of Defense apologized for "excesses" and provided restitution to civilians whose houses had been burned down by soldiers. In San Isidro, Chiapas, in March 1993, the military made a point of bringing along police to take responsibility for the detentions. Though they found the detentions to be illegal on the part of the police, the CNDH absolved the military for any responsibility for the abuses in San Isidro. Finally in Ocosingo, the military acted entirely on its own, without police. The Secretary of Defense report of May 31 confirming this activity made it appear that the detentions met with approval at the highest level of the government - military actions that were illegal on their face.

#### Conclusion

Minnesota Advocates does not possess information about whether there has actually been guerilla activity in Chiapas. Yet are a number of possible reasons tensions may have been particularly great in Chiapas at the time. The coup in Guatemala took place on May 25, one day after the detentions, and armed resistance may have been expected. The killing of Cardinal Juan Jesus Posadas Ocampo took place on the same day as the detentions, May 24. Joaquín "El Chapo" Guzmán Loera, the alleged drug trafficker accused by Mexico of the killing, is reported to have been operating from the Mexico-Guatemala border region in Chiapas and is said to have returned to Chiapas in the days immediately after the killing. He was captured near the Mexican border in Guatemala on June 10.



Whether or not there was guerilla activity in the region, these events do not justify the suspension of the rights of civilians under international human rights law or under the Mexican constitution. By acting outside the bounds of Mexican law, the Mexican military engages in *per se* arbitrary detention, prohibited by international human rights law. In the illegal actions documented in *Civilians at Risk*, the military is increasingly able to act outside the bounds of Mexican law without official recrimination or reprimand. The arbitrary detention of whole villages and the illegal search of homes in indigenous communities appear to be official policy.

*Civilians at Risk* also documents the impunity of police who systematically engage in the torture of detainees in the course of interrogations. The Mexican Government's National Human Rights Commission never once calls for the prosecution of this torture. Rather than enforcing human rights law, the instruments of justice in Mexico perpetuate grave human rights abuses.

## STATEMENT OF REP. JOHN J. LaFALCE

## COMMITTEE ON SMALL BUSINESS

## HEARING ON "HUMAN RIGHTS AND NAFTA: FRONT-LINE PERSPECTIVES

September 30, 1993

The Small Business Committee convenes this morning to continue its examination of the human rights situation in Mexico and its implications for the conditions that U.S. business can expect to encounter if NAFTA is approved.

There are those who contend that NAFTA is a trade agreement and has nothing to do with human rights. I strongly disagree. I believe the United States, as the world's leading proponent of democracy and the protection of individual rights, has a moral responsibility to clearly articulate the basic conditions which must obtain in countries with whom we will enter into free trade agreements. Indeed, Secretary of State Warren Christopher recently reaffirmed in Vienna that human rights would be a key consideration in U.S. trade policy.

This is not an abstract concern. U.S. citizens -- and U.S. businesses -- will be directly affected by the human rights environment in Mexico as they attempt to do business. What this Committee has learned of that environment to date is deeply troubling. On February 25 and June 29 of this year, the Committee heard compelling testimony from American and Mexican witnesses describing egregious violations of labor, political, judicial, and human rights that appear to be common occurrences in Mexico.

We have heard about the imprisonment--and sometimes, death--of courageous Mexican workers who seek to organize and strike for better pay and working conditions. We have heard about teachers and ordinary citizens in Yucatan working to monitor election polls--and being told the polls had moved. We have heard about a judicial system that does not function as our own -- that does not provide an even-handed, safe haven for the accused and does not promise the fair adjudication of disputes. We have heard that the United Nations Committee Against Torture rejected in November 1992 the Mexican Government's report on human rights finding "a distressing disjunction between legal reforms and actual practice."

It is this environment that U.S. business will confront under NAFTA. Evidence suggests that the business community is already feeling its impact.

This week a front-page story in the Wall Street Journal described the ordeal of a resort developer from Arizona who spent sixteen months in a Mexican jail suffering through "a bizarre nightmare." Eventually charges were dropped after the developer signed an agreement to change the terms of a bank loan. In another well-publicized case, an American exporter from Salt Lake City found himself being chased over dusty roads by Federal Judicial Police brandishing submachine guns in a race to the U.S. border. The police were after the original contracts and photographs from a \$4 million deal in which the exporter's Mexican customers broke their contract.

American companies operating in Mexico are discovering that formal joint venture agreements between themselves and Mexican partners can be subject to unilateral abrogation by well-connected local parties. Obtaining relief in such situations is a slow, expensive, frustrating and uncertain process.

There have been other troubling reports, not specifically involving U.S. companies, but certainly no less significant. Witnesses before this committee have reported the deaths in Mexican jails of a Peace Corps staffer from Washington, D.C. and a Californian found hanging by his sweater. I received a letter from a father in Texas whose 23-year-old, asthmatic daughter was arrested with friends and spent 9-1/2 months in a open cell block exposed to weather and insects, and denied medication on which she depended. Within two hours of release from jail, his daughter suffered an asthmatic attack and died. In my own backyard, as I have reported previously, a Catholic relief worker from Buffalo working in Chiapas was stalked and shot ten times--and lived to report the crime. Despite Congressional letters to President Salinas, the case has not been resolved.

At the Committee's June 29 hearing, Minnesota Advocates for Human Rights reported the results of its investigation in Chiapas, in a study that was later published entitled, "Civilians at Risk: Military and Police Abuses in the Mexican Countryside." These documented instances of military abuse of civilians, arbitrary detention, beatings, and torture have no place in a democratic society that is supposed to operate under the rule of law. Yet, efforts to focus attention on and address human rights problems have subjected those involved to serious risk. At the previous hearing, America's Watch testified that the courageous

actions of the Center for Human Rights in Chiapas in its efforts to monitor human rights incidents have subjected the Center "to very serious threats in Chiapas."

Conditions such as these are not only legitimate considerations the U.S. must take into account in making a determination on NAFTA, but central ones.

We are therefore pleased to welcome this morning two expert witnesses whose responsibilities relate directly to these key human rights issues. First, we will hear from Ms. Nancy Ely-Raphel, the Principal Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs. For years it has been the State Department's job to prepare an annual human-rights report on conditions globally. We are pleased to have this opportunity to get the Department's perspective on these important issues.

In our second panel, we will hear from Father Pablo Romo Cedano, Executive Secretary of the Center for Human Rights in Chiapas. I might add that Father Romo is in Washington to receive, with Bishop Samuel Ruiz Garcia on behalf of the Center, the Letelier-Moffitt Human Rights Award. We congratulate you and Bishop Ruiz, Father Romo, and are delighted to have you with us this morning.

We will begin with Ms. Ely-Raphel.



STATEMENT OF  
REP. JAN MEYERS (R-KS)  
RANKING REPUBLICAN MEMBER  
COMMITTEE ON SMALL BUSINESS

"HUMAN RIGHTS AND NAFTA"

SEPTEMBER 30, 1993

Mr. Chairman, the topic of today's hearing is again "Human Rights in Mexico." As I have said before, this is an important issue which we all are concerned about. I am looking forward to today's hearing and I thank you Mr. Chairman for having a witness here today from our State Department. I hope that both of today's witnesses will share with us not only stories of human rights shortcomings but stories of human rights successes in Mexico.

As all of us know, early this year President Salinas appointed Jorge Carpizo as Mexico's Attorney General. Mr. Carpizo, a distinguished jurist and scholar, had done an excellent job as President of Mexico's National Commission on Human Rights. I applaud President Salinas for this bold move and strong statement of the importance of improving human rights in Mexico.

Quite frankly, the naming of a man such as Mr. Carpizo as Attorney General is unprecedented in just about any country. In fact, an analogous situation might be if President Clinton were to name Ralph Nader as our Secretary of Commerce -- something I think is highly unlikely.

I do hope that before the actual floor debate on NAFTA later this fall, this Committee could spend some time and have at least one hearing where we hear from American small businesses on their experiences in commerce in Mexico -- both good and bad.

Both the majority and minority of this Committee have talented staffs that I am sure could find a number of small firms out there that could talk with us about what it is like for American businessmen and women to conduct business in Mexico.

I thank the witnesses for coming today, and I look forward to their testimony.

OPENING STATEMENT OF  
REP. RON KLING  
COMMITTEE ON SMALL BUSINESS  
HEARING ON  
NORTH AMERICAN FREE TRADE AGREEMENT  
AND HUMAN RIGHTS

SEPTEMBER 30, 1993

I would like to thank you, Mr. Chairman, for the Small Business Committee continuing its inquiries into the North American Free Trade Agreement (NAFTA).

Like many on this Committee, I am opposed to NAFTA. In hearings in this Committee and in the Banking, Finance and Urban Affairs Committee of which I am also a member, I have listened to the dire consequences that will ensue should this Agreement pass Congress. We cannot let this happen.

I oppose NAFTA because it may very well send hundreds of thousands of American jobs to Mexico.

Mr. Chairman, I have prepared a document that lays out the reasons for my opposition to NAFTA. At this point, I would like to submit that document for the record.

I am grateful that this Committee is addressing the issue of human rights violations within Mexico. This is an issue that the ill-conceived NAFTA agreement does not address in any way.

The first mention of this concern was brought up in this Committee's hearing back in February.

In that hearing, we heard testimony that "Mexico is an authoritarian country where men rather than written laws govern both civil and commercial life." We must ask ourselves if this is the type of justice that will benefit our businesses in America?

The Mexican Action Network on Free Trade (RMALC, for its Spanish initials) is a coalition comprised of more than 100 social organizations, including human rights groups. RMALC has come to the conclusion that NAFTA neither responds to the Mexican people's needs for development, nor helps to solve the serious social problems of the region.

RMALC is also concerned about the fact that these NAFTA negotiations have led directly to amendments to the Mexican Constitution. NAFTA also led to budget cuts in Mexico for programs dealing with employment creation, wage increases, health care, education, culture, housing and ecology.

The authoritarian Institutional Revolutionary Party (PRI)

rules Mexico through election fraud, corruption and brutal human rights violations. NAFTA will further entrench it in power.

The issue of human rights being violated is only one of many why the NAFTA agreement should not pass. Too much is at stake for America and Mexico to enter into an agreement that is not beneficial for all.

I look forward to hearing the testimony of the witnesses on the implications for NAFTA in regards to human rights in Mexico.

Thank you Mr. Chairman.



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AND TOURISM  
DEMOCRATIC STEERING AND  
POLICY COMMITTEE



Ron Klink  
Congress of the United States  
House of Representatives  
1st District, Pennsylvania  
CONGRESSMAN RON KLINK'S  
18 REASONS TO VOTE NO ON NAFTA  
June 18, 1993

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The Mexican Government and American business groups have engaged lobbying and public relations firms and have created advertisements defending the North American Free Trade Agreement (NAFTA).

H. Ross Perot estimates that 2.9 million American jobs could be moved to Mexico if NAFTA is approved by Congress. The political diversity of NAFTA's opponents is clear when you consider the trade experts who agree with Perot. One is Pat Choate, a conservative critic of the influence of foreign lobbyists. Another is Lori M. Wallach, an aide to consumer advocate Ralph Nader and member of the Citizens Trade Campaign, a group of mostly liberal labor, environmental, consumer and religious groups that oppose the pact.

House Majority Leader Richard Gephardt has said that the toughest part of passing NAFTA may be paying for the loss of tariff income to the Treasury and needed border infrastructure improvements. He has stopped insisting on a border tax of \$800 million a year but says no one has yet figured out how to raise the money.

Estimates for partial cleanup of the U.S.-Mexico border range from \$5 billion to \$50 billion. Yet the two countries have allocated little more than half a billion dollars.

1. NAFTA DOES NOTHING TO STOP U.S. COMPANIES FROM CLOSING PLANTS IN THIS COUNTRY AND MOVING PRODUCTION TO MEXICO.

According to one study, NAFTA could lead to the loss of 550,000 high-wage jobs over ten years, in relatively few industries.

NAFTA does not give serious attention to adjustment assistance for U.S. workers and communities that may be adversely affected.

2. NAFTA FAILS TO ADDRESS THE ENORMOUS DIFFERENTIAL BETWEEN U.S. AND MEXICAN WAGES.

NAFTA could force U.S. workers to compete with Mexican workers who receive wages amounting to 10 percent of U.S. wages. Mexico's system of labor relations keeps wages low, which allows Mexico to compete for foreign investment on the basis of low

wages. Mexican authorities are concerned that if wages rise under a normal process of business-labor negotiations, foreign investors will bypass Mexico for even lower-wage countries.

Proponents claim that the jobs that will be lost to Mexico from NAFTA are being lost anyway -- to Asia. They say that since Mexicans are likely to use their earnings to buy more U.S. goods than are people in Korea, Taiwan, Hong Kong or Singapore, the U.S. economy is better off if the jobs are lost to Mexico. Wages in developing countries in Asia are already higher than in Mexico. In 1988, average hourly earnings (including fringe benefits) in the maquiladora zone were 98 cents. In Singapore, they were \$3.09, in South Korea they were \$3.57 and in Taiwan, \$3.53. And there are obvious substantial transportation, communications and response time advantages to producing in Mexico now.

3. NAFTA WOULD ENCOURAGE THE BIG THREE DOMESTIC AUTO COMPANIES TO MOVE THOUSANDS OF MORE JOBS TO MEXICO.

Carmakers who have already started to manufacture in Mexico will increase production there to take advantage of cheap labor and lax enforcement of labor and environmental laws.

The Big Three domestic auto manufacturers would be allowed to treat Mexican content as U.S. content for purposes of Corporate Average Fuel Economy (CAFE) standards. U.S. auto companies would shift production of small, fuel efficient cars to Mexico, without violating fuel economy standards.

Japanese auto companies would be allowed to use Mexico and Canada as platforms to achieve further penetration of the U.S. market. This is because the so-called "rule of origin" in the proposed agreement (which establishes the level of North American content which motor vehicles must have to enter duty-free) would start at 50 percent and be gradually phased up to 62.5 percent.

Mexico and Canada would be allowed to protect their domestic auto industries through local sourcing requirements. There would be no comparable U.S. protections to ensure that automotive production and employment remain in this country.

The U.S. tariff on imported light-duty trucks from Mexico would be phased out rapidly over five years. This would encourage U.S. auto companies to shift a large share of light-duty truck production to Mexico.

4. NAFTA WILL LEAD TO MORE LEVERAGED BUYOUTS THAT WILL CAUSE COMPANIES TO RELOCATE TO MEXICO, WITH EVEN MORE JOB LOSS IN THE UNITED STATES.

The Amerimex Maquiladora Fund, which states that it will "purchase established domestic United States companies suitable for Maquiladora acquisitions, wherein a portion or all of the

manufacturing operations will be relocated to Mexico to take advantage of savings in the cost of labor." It is anticipated that the acquisitions will be on a leveraged basis.

The prospectus for the Amerimex Maquiladora Fund estimated that manufacturing companies now paying \$7 to \$10 an hour to their workers in the United States can pay Mexican workers just \$1.15 to \$1.50 an hour. By moving to Mexico, the companies would save \$10,000 to \$17,000 per employee each year, excluding relocation costs, the prospectus said.

#### 5. NAFTA WILL MAKE AMERICAN HIGHWAYS MORE DANGEROUS.

NAFTA requires all three countries to harmonize their truck safety standards. Canada and Mexico allow trucks that are longer and heavier -- and potentially more dangerous -- than those allowed in the United States.

NAFTA could flood U.S. highways with old, poorly maintained trucks that can endanger American travellers.

NAFTA could permit low-paid, possibly unqualified and/or fatigued foreign drivers behind the wheel of huge trucks on U.S. highways.

Canadian regulations allow truck drivers to drive considerably longer each day without rest than they run in the U.S. Mexican law places no limit on hours of service.

Mexican truck drivers make as little as \$7 a day and don't have to meet the same safety standards as U.S. drivers. They don't have the same requirements for hazardous materials training, speaking or reading English, drug and alcohol testing, or limits on hours they can be on the road without a break. They aren't listed in the computers that state and local police use to check past records of drunk driving or other safety violations.

With these trucks and drivers on U.S. roads, NAFTA could force a roll back of essential U.S. highway safety standards.

#### 6. NAFTA WILL HURT THE U.S. APPLIANCE INDUSTRY.

NAFTA would immediately eliminate U.S. tariffs on major appliances imported from Mexico, but allow Mexico 10 years to phase out its 20 percent tariff on U.S. appliances.

The U.S. International Trade Commission predicts a five percent decline in U.S. major appliance production and employment in the short-term and 10-15 percent in the long-term.

American companies like Frigidaire, which has made a commitment to keeping jobs in America, is denied access to Mexican markets under NAFTA.

# 7. NAFTA WILL DAMAGE U.S. GLASS MANUFACTURERS AND THROW THOUSANDS OF GLASS WORKERS OUT OF WORK.

Mexico's world-class glass industry will be able to ship 98.6 percent of its flat glass and automotive safety glass to the U.S. without tariff.

But 95 percent of U.S.-made flat glass will continue to pay a 20 percent tariff going into Mexico for at least five years.

The competition for U.S. flat glass is the Mexican Vitro S.A., recognized as one of the world's most technologically advanced and competitive producers of flat glass in the world, with annual sales of more than \$3 billion. Vitro recently bought a U.S. distribution company, built a huge warehouse in Laredo, TX, and has a growing flat glass operation 140 miles south of the border.

Flat glass from Mexico now represents just 0.3 % of the US market. But Vitro is in position to capture more than a quarter of the flat glass market in the South and West and as much as 13 percent of the total US market before the last tariffs fall 10 years from now.

That could cost 6,000 jobs and cut the U.S. glassmaking workforce in half.

# 8. AMERICAN FARMERS WILL SUFFER GREATLY UNDER NAFTA.

While NAFTA opens our markets, it does not increase the market access of American farmers. Corn and dry edible beans are staples of the Mexican diet. American farmers are very efficient at producing these commodities. However, NAFTA denies U.S.-produced corn and dry edible beans access to the Mexican markets.

Bush Administration negotiators ignored Canadian grain transportation when the Canadian Free Trade Agreement (CFTA) was negotiated. Now Canadian durum wheat is flooding our markets and we can do nothing to stop it. Hard red spring wheat and barley are now pouring across the border as well.

Prior to 1989, when CFTA went into effect, the U.S. supplied 75 percent of the wheat and barley imported by Mexico, while Canada supplied the remainder. Four years after the approval of CFTA, our positions have reversed. Canada now has 75 percent of the market. The U.S. share has shrunk to 25 percent.

The sugar provisions of NAFTA are enormously unbalanced and, if enacted, will decimate the U.S. sugar industry. Section 22 import restrictions have allowed the U.S. sugar industry to survive on a thin margin. NAFTA allows Mexico to "dump" its net surplus of sugar in the U.S. market in the seventh year of the agreement.



# 9. NAFTA WILL BE HARMFUL TO THE ENVIRONMENT.

NAFTA could force our state and federal governments to drop pesticide controls and other environmental standards because they supposedly interfere with free trade. Mexico does not adequately enforce environmental standards for keeping pollution and pesticides out of the ground and water.

Climate change and harm to species, forests, soil and water resources will be accelerated by NAFTA's push for fossil fuel-intensive manufacturing of goods. At the Earth Summit in Rio de Janeiro last year virtually every world leader, including Al Gore, denounced such unsustainable development as an unconscionable threat to future generations.

# 10. NAFTA WILL CAUSE PUBLIC DECISIONS TO BE TRANSFERRED FROM U.S. LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL INSTITUTIONS TO SMALL GROUPS OF UN-ELECTED AND POSSIBLY UNACCOUNTABLE TRADE EXPERTS.

# 11. NAFTA WILL INCREASE THE NUMBER OF UNDOCUMENTED ALIENS ENTERING THE U.S.

Many experts make a strong case that NAFTA will actually increase immigration across the Rio Grande River. They argue that the treaty may well help develop Northern Mexico and draw Mexicans from the country's interior.

The idea of Maquiladoras was to provide an area of insulation along the Mexican-U.S. border where Mexicans from all over the country could find industrial jobs.

Once in the north, however, the internal migrants may keep going and cross the river. One estimate is that migration will increase by 100,000 annually. Thus, the United States must be prepared not only for the short-term dislocations and public anxiety that accompanies jobs being lost to low-wage workers in Mexico but also for increased illegal flows of Mexican migrants seeking jobs in the United States.

In addition, some 13 million Mexican peasants will be uprooted from the countryside. That figure is from the Mexican undersecretariat of agricultural planning, which sees it as an inevitable cost of the "modernization" of Mexican farming by capital-intensive, chemical-intensive agribusiness, which NAFTA and other programs promote.

# 12. THE PROSPECT OF U.S. CORPORATIONS INVESTING IN NEW FACTORIES IN MEXICO AT THE SAME TIME THEY ARE CLOSING THEM IN THE U.S. IS AT THE HEART OF THE NAFTA DEBATE.

NAFTA could result in Mexico's becoming an "export platform" for companies from other countries looking for low wages and secure access to the U.S. market. Foreign companies that in the

past might have invested in the U.S. to gain access to the U.S. market may choose to produce in Mexico instead. Hence, U.S. firms would be facing new competition without any offsetting gains to U.S. workers. Such an outcome would spell significant losses for U.S. industry and workers.

#### 13. NAFTA WILL MEAN JOB LOSS IN THE U.S.

Even some economists who use Bush Administration information to claim that NAFTA would create 175,000 U.S. jobs admit that they see a small net job loss over 15 to 20 years. Labor union economists predict a loss of 550,000 jobs over 10 years.

Proponents claim that losses will be limited to a few, primarily low wage sectors of the U.S. economy (e.g. apparel, glass, fruits, vegetables, and trucking). But according to a International Trade Commission report, "unskilled workers in the United States would suffer a slight decline in real income." According to the definitions used by the ITC study, this refers to 73 percent of all U.S. workers.

#### 14. AND NAFTA WILL FORCE U.S. WAGES LOWER.

NAFTA will encourage U.S. producers to meet international competition by reducing the wages -- and thus the living standards -- of the U.S. workforce, not by improving their products and productivity. By making low wages in Mexico the centerpiece of U.S.-Mexico integration, NAFTA could cause the living standards for working people in both nations to decline.

The threat (and reality) of plant relocation to Mexico has reduced manufacturing wages in the United States in the last decade. So will the threat (and reality) of moves to the Caribbean Basin, Guatemala, or Venezuela restrain wage growth in Mexico.

The United States maintains a federal minimum wage. We do not consider it a legitimate free market activity for the state of Mississippi to promise wage rates of less than \$4.25 per hour in order to lure a Toledo manufacturer to relocate. Why should we create conditions under which the state of Chihuahua can induce U.S. manufacturers to relocate in order to take advantage of \$1 hourly wages.

Similar questions apply to environmental regulation. No state can recruit employment by promising exemption from EPA standards. Yet our current and proposed economic arrangements with Mexico permits states south of the border to engage in just such recruitment.

# 15. PACIFIC RIM NATIONS GREW ECONOMICALLY BY PROTECTING THEIR DOMESTIC MARKETS.

NAFTA proponents often point to the experiences of South Korea or Taiwan as examples of the potential of the Mexican economy for rapid growth based on free trade with an export orientation. (This growth came at the expense of U.S. manufacturers.)

But actual experience suggests the opposite conclusion. Nations like Korea and Taiwan grew by keeping their domestic markets protected from outside competition, by keeping wages artificially low by tight controls over capital investment and with heavy government subsidies, including aid from the United States. If East Asia is the theoretical inspiration for Mexican development, then the free trade model does not apply.

# 16. THE PRIMARY PURPOSE OF NAFTA IS TO INCREASE THE ABILITY OF U.S. MULTINATIONAL CORPORATIONS TO SHIFT PRODUCTION TO MEXICO WHILE KEEPING FREE ACCESS TO THE U.S. MARKET

Trade is already largely free, even without NAFTA. As Mexico has liberalized trade barriers, so has the U.S. Tariffs on Mexican goods average about 3.5 percent while half of all Mexican exports already enter the U.S. almost duty free. Mexican restrictions on foreign investment -- with the major exception of petroleum and extractive industries -- have also been liberalized.

U.S. export gains from NAFTA will be small. The trade liberalization of the last five years released the pent-up demand for U.S. consumer goods by the small Mexican middle class. As a result, between 1986 and 1989, U.S. exports rose and our trade deficit with Mexico narrowed from \$4.9 billion to \$2.2 billion.

# 17. NAFTA IS A LOSER FOR THE MEXICAN PEOPLE.

The Mexican Action Network on Free Trade (RMALC, for its Spanish initials) has come to the conclusion that the NAFTA, as it stands, neither responds to the Mexican people's needs for development, nor helps to solve the serious social problems of the region.

RMALC is also concerned about the fact that these negotiations have led directly to amendments to the Mexican Constitution. NAFTA also led to budget cuts in Mexico for programs dealing with employment creation, wage increases, health care, education, culture, housing and ecology.

RMALC rejects an agreement that consolidates or promotes exclusive development strategies, which over the past few years have led to appalling levels of impoverishment among the majority

of the Mexican people, environmental degradation and the subordinated integration of our economy with the economy of the United States.

RMALC rejects any kind of agreement that counteracts and/or limits labor rights, benefits, the right to free association, to collective bargaining or the right to strike.

Recent history suggests that wage levels in Mexico will not automatically increase. Between 1982 and 1988 -- the period of Mexico's debt crisis -- Mexican wages fell about 50 percent in real terms. Its per capita gross domestic product declined by about 12 percent. Mexican manufactured exports to the U.S. climbed at an average rate of 24 percent per year -- from \$5 billion in 1982 to \$18 billion in 1988.

Mexico Commerce Secretary Jaime Serra Puche conducted a series of day-long seminars to convince U.S. business executives to invest in Mexico. They were given materials which explained that "for every \$10 per hour (fully burdened) job transferred to Mexico, the company will earn and additional \$15,000 a year: Because demand has hardly made a dent in supply, the direct (Mexican maquila) wage in 1994 should be only about \$1.75 compared to \$1.40 today. The gap between the U.S. minimum wage and the Mexican direct wage will in fact increase during this period as labor shortages in the U.S. increase demand."

Mexico's authoritarian Institutional Revolutionary Party (PRI) rules that country through election fraud, corruption and brutal human rights violations. NAFTA will further entrench it in power. NAFTA is even more important to President Salina de Gortari as a public relations tool for his PRI party than as a trade deal.

#### 18. EFFECTIVE SIDE AGREEMENTS ARE IMPOSSIBLE

U.S. Trade Representative Mickey Kantor has promised to include in the NAFTA side agreements basic legal and political changes inside Mexico that he simply cannot deliver. "We are going to insist that we have some changes in the Mexican judicial system to make sure people have access to that system, that due process is followed and that administrative decisions can be appealed in court." Kantor has said.

One Mexican politician with close ties to the government of President Carlos Salinas de Gortari says Kantor "is promising what he cannot deliver, what no one can deliver. How can Kantor publicly tell members of Congress that he will produce changes in Mexican law when we cannot possibly begin such a process now? "

"The (Mexican) president's term is effectively over now, and we have elections next year. Thus, I cannot imagine when Salinas could make the legal changes that Kantor requires, even if he were inclined to do so."



**CONGRESSMAN SAM JOHNSON****SMALL BUSINESS OPENING STATEMENT, JUNE 29, 1993****NAFTA AND HUMAN RIGHTS IN MEXICO****MR. CHAIRMAN:**

**I WANT TO THANK YOU FOR HOLDING THIS HEARING TODAY TO DISCUSS HUMAN RIGHTS VIOLATIONS IN MEXICO. IN ADDITION, I LOOK FORWARD TO ADDRESSING THE EFFECTS THAT NAFTA WOULD HAVE ON THESE VIOLATIONS.**

**ALTHOUGH IT CANNOT BE DISPUTED THAT HUMAN RIGHTS ABUSES HAVE OCCURRED IN MEXICO, (AND TO SOME DEGREE STILL DO), PRESIDENT SALINAS HAS TAKEN MANY POSITIVE STEPS TO IMPROVE THE SITUATION.**

**FOR EXAMPLE, IN 1990, PRESIDENT SALINAS CREATED AN INDEPENDENT NATIONAL COMMISSION TO INVESTIGATE HUMAN RIGHTS VIOLATIONS. THIS COMMISSION RECOMMENDS WHAT ACTION THE ATTORNEY GENERAL'S OFFICE SHOULD TAKE TO PROSECUTE THESE VIOLATORS. IN FACT, JORGE CARPIZO, THE NEWLY APPOINTED ATTORNEY GENERAL, RECENTLY PLEDGED THAT HIS**

**OFFICE WILL CRACK DOWN ON HUMAN RIGHTS ABUSES AND FOLLOW THE COMMISSION'S RECOMMENDATIONS TO PROSECUTE ALL VIOLATORS.**

**IT IS UNDENIABLE THAT, UNDER THE DIRECTION OF PRESIDENT SALINAS, MEXICO HAS MADE GREAT IMPROVEMENTS. ALONG WITH THE HUMAN RIGHTS COMMISSION, LEGAL REFORM MEASURES HAVE BEEN CONSIDERED AND, AS A RESULT, INCIDENTS OF HUMAN RIGHTS ABUSES HAVE SIGNIFICANTLY DECREASED. IN ADDITION, MEXICO'S CONGRESS IS EXPECTED TO PRODUCE POLITICAL REFORM LEGISLATION TO REGULATE PRESIDENTIAL AND CONGRESSIONAL ELECTIONS.**

**PRESIDENT SALINAS HAS MADE CONCERTED EFFORTS TO WORK WITH THE AMERICAN GOVERNMENT TO IMPROVE MEXICO'S SITUATION. BY STRIVING TO STABILIZE THE MEXICAN ECONOMY, IMPROVE LABOR AND HUMAN RIGHTS STANDARDS, AND LIBERALIZE POLITICAL BARRIERS, PRESIDENT SALINAS HAS DEVELOPED A CLIMATE IN MEXICO THAT WILL ONLY IMPROVE WITH THE PASSAGE OF NAFTA.**

I WANT TO SHARE WITH YOU A FEW WORDS OF SECRETARY OF STATE WARREN CHRISTOPHER, WHICH APPEARED THIS MORNING IN AN DALLAS MORNING NEWS ARTICLE. SECRETARY CHRISTOPHER SAID THE NAFTA AGREEMENT "WILL GIVE MEXICO GREATER CAPACITY TO MAKE PROGRESS ON THE MANY ISSUES INVOLVING THE QUALITY OF LIFE." HE GOES ON TO SAY, "FREE MARKETS AND FREE TRADE DO FAR MORE THAN ANY AID PROGRAM TO CREATE REAL GROWTH AND UPWARD MOBILITY--AND THE PROSPERITY THAT IS VITAL TO THE STABILITY OF DEMOCRACY."

THANK YOU MR. CHAIRMAN.

STATEMENT FOR  
CONGRESSMAN FLOYD H. FLAKE  
BEFORE THE COMMITTEE ON SMALL BUSINESS  
SEPTEMBER 29, 1993

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE ON SMALL BUSINESS. I THANK THE CHAIRMAN FOR HOLDING THIS HEARING ON THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) AND CONDITIONS OF HUMAN RIGHTS IN MEXICO. ADDITIONALLY, I WELCOME OUR PANEL OF WITNESSES AND I LOOK FORWARD TO THE TESTIMONY THEY WILL PROVIDE.

I CERTAINLY BELIEVE THAT IT IS FITTING TO DISCERN THE HUMAN RIGHTS CONDITIONS IN MEXICO AND THE POSSIBLE RAMIFICATIONS OF ENTERING INTO THIS AGREEMENT. IT IS PLAIN THAT HUMAN RIGHTS CONDITIONS IN MEXICO LEAVE MUCH TO BE DESIRED AND THE JUDICIAL SYSTEM IS IN GREAT DISARRAY. THEREFORE, THE IMPLICATIONS OF THE U.S. ENTERING INTO NAFTA COULD BE DIRE IF WE DO NOT ADDRESS THESE CONCERNS.

WE CAN NEITHER CONTRADICT NOR CONCEDE THE DEMOCRATIC PRINCIPLES ON WHICH OUR NATION WAS FOUNDED BY ENTERING INTO AN AGREEMENT WITH A NATION THAT IS NOT COMMITTED TO THOSE SAME PRINCIPLES. WITH THAT IN MIND, I BELIEVE THAT WE MUST ENSURE OUR ADHERENCE TO MORAL CONDITIONS OF HUMAN RIGHTS WITHIN OUR OWN BORDERS. AS WE CONSIDER WAYS IN WHICH TO STRENGTHEN OUR ECONOMY BY INCREASING OUR STAKE IN THE GLOBAL ECONOMY, LET US BEGIN BY ADDRESSING THE URGENT NEEDS OF URBAN AND RURAL ECONOMIES AND HUMAN RIGHTS CONDITIONS WITHIN AMERICA. NAFTA IS AN IMPORTANT ACCORD, HOWEVER IF WE CONTINUE TO NEGLECT THE THIRD WORLD WITHIN OUR BORDERS, NO AGREEMENT WILL STRENGTHEN OUR PLACE IN THE GLOBAL ECONOMY.



AGAIN, I WELCOME OUR WITNESSES AND I LOOK FORWARD TO THE  
VALUABLE INSIGHT THEY WILL PROVIDE.

bst33

GLENN POSHARD  
15th DISTRICT ILLINOIS

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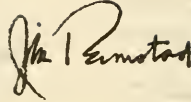
**STATEMENT OF CONGRESSMAN GLENN POSHARD (D-IL)**  
**COMMITTEE ON SMALL BUSINESS**  
**NAFTA AND HUMAN RIGHTS**  
**SEPTEMBER 30, 1993**

Mr. Chairman, thank you for this opportunity to discuss the human rights elements of the proposed North American Free Trade Agreement. I appreciate the leadership you have provided our committee and this Congress on this most important issue.

One of the key elements of this treaty is whether we will bring about reform in the Mexican government and make substantial gains in the areas of human rights and fairness for working people. I have grave reservations about this treaty being able to accomplish those goals.

The underlying theory behind NAFTA is sound. I agree with the concepts and goals of expanded trade and a substantial improvement in the quality of life for the people of Mexico. But I regret that everything I have been able to learn about this proposal, particularly through our hearings in this committee, leads me to believe that will not be the ultimate result.

Thank you, Mr. Chairman, for continuing our pursuit of this issue.



**STATEMENT BY CONGRESSMAN JIM RAMSTAD  
BEFORE THE HOUSE SMALL BUSINESS COMMITTEE  
September 29, 1993**

**HUMAN RIGHTS IN MEXICO**

Mr. Chairman, as I mentioned during a similar hearing in June, I certainly share your concern about human rights in Mexico. It is absolutely imperative that we encourage the Mexican government to continue to improve the human rights situation -- as it has in recent years.

Again, I am pleased that Country Reports on Human Rights Practices for 1992, which was submitted to Congress by the State Department in February, indicated marked improvement in the human rights situation in Mexico. While human rights abuses continue in Mexico, the State Department report stated "According to the National Human Rights Commission (CNDH), however, as well as state and local human rights advocates, allegations of such abuse declined in 1992."

Mr. Chairman, implementing NAFTA and increasing Mexico's exposure to the rest of the world generally and to the U.S. and Canada specifically can only improve the situation for Mexican citizens.

Across the globe where governments have embraced more open, market-based economic systems, internal pressure forced changes in political conditions as well. From Poland, Hungary and Russia to Chile and Vietnam, economic freedom has been followed by greater political freedom.

While I certainly am not completely satisfied with human rights conditions in these nations, I do believe improvements have been generated at least in part by greater openness and stronger ties to nations like the United States that do respect human rights.

That's why NAFTA is important not only for both the U.S. and Mexican economies, but also for the people of Mexico. Stronger ties to the U.S. will undoubtedly increase the exposure of Mexico's practices with respect to human rights and result in an improvement of this situation.

Thanks again for holding this hearing Mr. Chairman. I look forward to hearing from the panelists.

HUMAN RIGHTS IN MEXICO

TESTIMONY BY  
NANCY ELY-RAPHEL

PRINCIPAL DEPUTY ASSISTANT SECRETARY  
BUREAU OF HUMAN RIGHTS AND HUMANITARIAN AFFAIRS  
DEPARTMENT OF STATE

BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS

SEPTEMBER 30, 1993



Mr. Chairman, Members of the Committee, I am honored to appear before you today. On behalf of the Bureau of Human Rights and Humanitarian Affairs of the Department of State, I want to thank you for the opportunity to discuss human rights conditions in Mexico.

Human rights in Mexico have undergone a considerable transformation in the past few years, one marked by increasing awareness of their importance and concrete steps taken to reduce human rights violations. Nevertheless, as we have detailed in our annual human rights report, serious violations of internationally recognized human rights still persist in Mexico. Among those serious problems is a political system which is becoming more open but is still flawed. Other problems are the use of torture, widespread brutality and instances of extra-judicial killings by police and a frequent failure to punish those responsible for such transgressions.

Human rights violations, sadly, remain common throughout the world. In examining a government's human rights record, we assess whether a government condones human rights abuses and whether a government attempts to address its human rights problems in a serious and responsible manner.

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In the case of Mexico, there is no evidence that the government condones human rights abuses committed by its agents. On the contrary, President Carlos Salinas de Gortari has publicly and strongly stated the importance of protecting human rights as a matter of Mexican domestic policy and has lent the authority of his office to efforts to reduce violations, most particularly by the establishment of the National Commission on Human Rights in June 1990. Through increasingly strong legislation, he has also attempted to promote democratization and equity in the electoral process.

The Commission is proving to be effective. It has a mandate to investigate violations of human rights by government agencies, to report publicly on those abuses, and to promote human rights education of the public. The Commission sets up separate investigations into areas of special concern such as disappearances, treatment of indigenous people, attacks on journalists and prison conditions.

From May 1992 to the present, the Commission's efforts resulted in disciplinary action against 1031 government employees. In 348 of those cases criminal charges have been filed. It will take some time for the 348 cases to move through the judicial system. We shall track these cases closely.

In June 1992, legislation was passed to create similar human rights commissions at the state level in each of Mexico's 31 states.

The chief criticism of the Commission has been its lack of

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enforcement powers and the fact that it must often rely on the very institution it is investigating to carry out its recommendations. As a result, some recommendations are often only partially implemented, a fact that the Commission has publicized. The Mexican press has strongly supported the Commission's efforts and has given its recommendations wide dissemination. While some agencies continue to resist compliance with these recommendations, they will do so increasingly in the harsh glare of publicity.

In January 1993, President Salinas further strengthened his commitment to improve Mexico's human rights record by appointing Jorge Carpizo McGregor, the former president of the National Human Rights Commission, as Attorney General, providing the Commission with a firm ally in the most important law enforcement agency in the country.

Other efforts to bring Mexico's human rights record into compliance with international standards include legislation recently enacted making confessions inadmissible at trial unless obtained in the presence of defense counsel and a judge or public ministry official, training programs to raise professional standards within the federal police and the appointments of respected human rights activists as head of the Mexico City Human Rights Commission and as Attorney General for the State of Chihuahua.

Does this mean that Mexico should no longer be of concern to human rights monitors? No. Of concern to us in particular are the persistence of human rights abuses perpetrated by Mexican police forces. Also of concern are the weaknesses of the democratic electoral process, although reform efforts are underway.

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A culture of impunity or belief by the police forces that they are above the law affects many members of the police and has prevented effective implementation of many of the changes initiated by President Salinas. Despite downward trends in numbers of cases reported by the National Human Rights Commission, police still use torture to coerce confessions from detainees. There are frequent reports of arbitrary detention and police brutality.

Although the majority of instances of police abuse, arbitrary arrest and torture have been directed against Mexican citizens, there has also been instances of abuse against American citizens. In 1992, the US Government formally protested through official channels 16 cases of torture or other mistreatment by police. It should be noted, of course, that the Mexican Government has also raised with us a number of allegations of abuse of their nationals in the U.S.

There are also problems involving the rights of the indigenous. Because many of Mexico's indigenous are marginalized and impoverished, they are often the victims of human rights violations in rural land disputes, such as forcible ejections and police violence. Some human rights groups have called for an amnesty for many indigenous people who, the groups charge, are denied access to fair trials because of language and cultural barriers, as well as poverty. Criminal procedures were recently amended to provide interpreters for non-Spanish speaking indigenous people.

There were recent reports that the police and army in Chiapas and Chihuahua states had been responsible for arbitrary



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detentions, beatings and some instances of torture committed against indigenous people during investigations into the death and disappearances of army personnel. The Commission held a public press conference this month to state that it had done a full investigation of the incidents; among the actions that resulted were the arrest of four army personnel for violations of the military code.

Solutions to Mexico's problems are hindered by a weak judicial system that sometimes fails to observe the rights defendants are granted by law. Also, factors such as low pay and high caseloads contribute to corruption and inefficiency within the judicial system. This is, however, an area that is also undergoing change. Since Jorge Carpizo became attorney general, 1205 officials in his office have been forced to resign, 300 have been prosecuted and 45 are now in jail serving sentences that average over 5 years each.

Another area of concern is Mexico's electoral process. Since 1929, the government of Mexico has been controlled by the Institutional Revolutionary Party, or PRI by its Spanish acronym, or its predecessor, which has won every presidential race and every gubernatorial race with the rare exception of one in 1989 and another in 1992. There has been some violence surrounding close elections at the state and local level, some Mexican voters lack confidence in both the electoral system and PRI's commitment to abide by reforms, and there are still credible reports of election and voter fraud. Of further concern is the unwillingness of the government to invite official international observers to monitor the elections

themselves. International NGOs have, however, been allowed to observe the elections.

The Government of Mexico has responded by enacting a series of political and electoral reforms beginning in 1990. The reforms, enacted as the Federal Electoral Processes and Institutions Code, created an independent and impartial electoral tribunal and introduced a new voter registration system. These electoral reforms have opened up the political system and opposition parties have made gains. Today, 12-15 million Mexicans (out of 89 million) are governed by the opposition at the state or local level. Opposition parties control ten percent of Mexico's municipalities and the National Action Party (PAN) holds three of the 31 governorships, as a result of winning two elections and having their candidate appointed following a disputed election.

This month a special session of the Mexican Congress enacted additional political and electoral reforms to address inequities in the system. The reforms include elimination of the "governability" clause which granted an automatic majority in the House of Deputies to any party receiving 35 percent of the vote; other reforms created guarantees that 25 percent of the Senate will be from the opposition; prevented newly elected legislators from approving their own elections and increased opposition access to the media. In future elections, we will be watching closely to see the effects of these reforms.

Regarding labor, reports continue to arise about the inability of workers to organize, to be able to work in a safe environment and bargain individually and collectively for wages

sufficient for daily support. Although the Mexican labor force has enjoyed a high level of unionization, the unions are for the most part linked to the PRI. These ties, however, are weakening as the government installs various decentralization measures and as internal movements within the unions strive toward independence. Under the constitution, workers' rights are protected and implemented under the Mexican Federal Labor Laws and Social Security Laws, although the standard wage of unionized workers is generally higher than that of non-unionized workers.

The safety conditions in the Mexican workplace are generally improving. Enforcement of health and safety rules is considered effective for large companies, including most maquiladoras, although the compliance of small private business is less satisfactory. Payroll taxes are adjusted according to the safety records of each business operation, and each workplace is subject to labor and management safety and monthly health committee inspections.

The protection of workers' rights in Mexico is limited because they are outside the jurisdiction of the National Commission on Human Rights. Complaints about violations of workers' rights cannot be brought to the Commission's investigative forum. An amendment to the Commission's initial implementing legislation was passed earlier this year exempting both labor and electoral issues.

In conclusion, Mexico is a nation which has a long history of human rights abuses, but has recently demonstrated strong progress in addressing those abuses. The Department strongly

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supports these efforts by Mexico. Discussions on human rights are a regular part of our dialogue with the Mexican government. One recent example of that support is the meeting between USUN Ambassador Albright and the President of the National Commission on Human Rights earlier this year.

Changes are taking place as Mexico modernizes and becomes more open to the outside world. The change is not complete and problems persist; however, the clear trend is towards an improved human rights situation. Thank you, I will now take any questions you have.



QUESTION 1: OF THE 348 CASES WHERE CRIMINAL CHARGES HAVE BEEN FILED SINCE MAY OF 1992 TO THE PRESENT, HOW MANY HAVE MOVED THROUGH THE (JUDICIAL) SYSTEM?

INSERT TO PAGE 30, LINE 685:

According to the National Commission of Human Rights' Annual Report, from May 1992 to May 1993 the National Commission of Human Rights recommended disciplinary or penal measures against 394 public employees, 191 of which are federal and 203 are local. Penal action was taken against 152 public employees. We have asked our post to investigate and will provide the information as soon as it is available. In addition, 68 were dismissed, 89 were suspended, 40 were relieved of their positions, 37 were subject to a warning, and 8 were subject to a fine. Information about May 1993 to the present will be published by the CNDH in November.

UNCLASSIFIED

QUESTION 2: ANY IDEA OF THE NUMBER OF OPPOSITION POLITICAL LEADERS THAT HAVE BEEN ASSASSINATED (IN THE LAST TWO TO THREE YEARS)?

INSERT TO PAGE 39, LINE 905:

There have been instances of political killings or disappearances of Democratic Revolutionary Party (PRD) activists since 1988. This year the on-going investigation by a special prosecutor, himself a PRD member, into the 1988 murders of Obando and Gil, two aides of Cuauhtemoc Cardenas, leader of the PRD, resulted in the arrest of two former state officials, charged with covering up the case.

The Human Rights Commission, the Attorney General's office, and special prosecutors are investigating other claims of violence against PRD members. The CNDH is investigating a list of 140 reported acts of violence against PRD members, including 30 killings. It has issued recommendations in more than 30 cases, calling for the prosecution of those involved.

UNCLASSIFIED

QUESTION 3: ANY IDEA HOW MANY OPPOSITION LEADERS HAVE MYSTERIOUSLY DIED PREMATURELY? (Repeat of Question No. 2)

INSERT TO PAGE 40, LINE 912 (Same Answer to Question No. 2):

There have been instances of political killings or disappearances of Democratic Revolutionary Party (PRD) activists since 1988. This year the on-going investigation by a special prosecutor, himself a PRD member, into the 1988 murders of Obando and Gil, two aides of Cuauhtemoc Cardenas, leader of the PRD, resulted in the arrest of two former state officials, charged with covering up the case.

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UNCLASSIFIED

QUESTION 4: WHAT DO YOU HAVE TO SAY ABOUT THE CONCENTRATION OF WEALTH WITHIN MEXICO? DO WE HAVE ANYBODY WHO LOOKS INTO WHO BENEFITS FROM THE PRIVATIZATIONS THAT ARE TAKING PLACE (IN MEXICO)?

INSERT TO PAGE 52, LINE 1220-22:

The privatization program, which the World Bank and the International Monetary Fund described as a model for other developing countries, is a key component of the Salinas administration's economic modernization program, which promotes economic competition, creates new incentives for the professionalization of the public administration, and fosters greater pluralism in Mexican decision making. In order to protect the competitive process, new antitrust legislation was approved in 1992. The new federal law on economic competition takes a strong stance on anti-competitive practices such as price fixing arrangements, horizontal market division, and bid rigging. Mergers above the thresholds established by the law must be prenotified. In evaluating a merger, the main criteria is the impact it might have on competition. All this is being done in order to translate economic growth into increased benefits for the largest possible majority.

In addition, understanding that it must have a sound infrastructure in order to attract and retain investors and compete in the world economy, Mexico's privatization drive also serves as the cornerstone of the government's transportation infrastructure development plan, which has so far promoted the construction of over 1,300 miles of four-lane highways financed primarily with private money. Another 1,400 miles are under construction or planned. Similar schemes are being formulated for the expansion and modernization of air and maritime ports.

UNCLASSIFIED



**TESTIMONY BEFORE THE COMMITTEE ON SMALL BUSINESS  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.**

presented by

**FR. PABLO ROMO CEDANO, O.F.  
EXECUTIVE SECRETARY  
CENTER FOR HUMAN RIGHTS,, "FRAY BARTOLOME DE LAS CASAS"  
DIOCESE OF SAN CRISTOBAL DE LAS CASAS  
CHIAPAS, MEXICO**

September 30, 1993

Honorable Chair, members of the Committee:

I thank you sincerely for giving me this opportunity to present testimony concerning the human rights situation in Mexico, specifically in the state of Chiapas.

My name is Pablo Romo. I am executive secretary of the Center for Human Rights, "Fray Bartolomé de Las Casas." The Center is a non-governmental organization whose objective is the promotion and defense of human rights. It was created four years ago by the Catholic Diocese of San Cristóbal de Las Casas led by Bishop Don Samuel Ruiz Garcia. The Center responds to cases presented to it by individuals and groups as well as to those cases whose seriousness affects the community at large. It acts without distinction on account of religious belief or political opinion, with special concern for those who are marginalized from society, especially the poor and indigenous people.

As you are aware, I present this testimony in the context of increasing economic integration between Mexico and the United States. This integration, including the North American Free Trade Agreement, must not proceed without careful consideration of its effects on human rights and the advancement of democratic values in Mexico.

**CONTEXT.**

The state of Chiapas is located in the southeast of Mexico bordering Guatemala. It covers a geographic area of 73,887 km<sup>2</sup> with a population of more than 3 million people distributed in 16,422 localities, three fourths of which are between 1 and 99 inhabitants.<sup>1</sup> Chiapas is marked by many contrasts: its wealth in natural resources stands in dramatic contradiction to the poverty of the majority of its people. Of the total dwellings,<sup>2</sup> more than a third have only one room, nearly all occupied by five or more people; nearly 400,000 people in Chiapas cook with wood or charcoal. Though Chiapas produced 55% of the country's

1.- National Census, 1990. INEGI.

2.- 594,523 dwellings

electrical energy in 1990, one in three houses in the state lacks electricity.<sup>3</sup>

The minimum wage in Chiapas is equivalent to \$4.00 dollars a day. Of the economically active population (854,159), 59% receive the minimum wage or less, 21% receive twice the minimum wage, 18.7% receive between 2 and 10 times the minimum wage, while 1.3% receive more than 10 times this wage. Three fourths of the population 12 years or older have less than a primary school education, and only 1% of those working are professionals.

Causes of death in the state of Chiapas, especially in the Indian communities, are the same as they have been for the past 40 years: intestinal and respiratory infections and malnutrition. More than 8 million Mexicans live in indigenous communities where the mortality rate is 12% higher than it is in the rest of Mexico. The three states of Mexico where the most people die due to the causes noted above are Guerrero, Oaxaca, and Chiapas.<sup>4</sup> Deaths from tuberculosis in Chiapas are the highest in the country.<sup>5</sup> Between January and October of 1992, 3,000 cases of malaria were reported.<sup>6</sup> In recent months, 71 children were born without brains (anaencefalic), in seven municipalities of the state: Teopisca, Ocosingo, Cintalapa, Pijijiapan, Motozintla, San Cristobal, and Ocosocuatla, apparently due to malnutrition.<sup>7</sup> 23,000 cases of oncocercosis have been registered in the state in recent months, mostly in the Soconusco region.

Politically, the state is highly unstable. In the last two years, there have been 23 changes in municipal presidents; in other words, almost 25% of local governments have changed between elections. These occurred in: Chanal, Mazatán, Arriaga, Ocotepec, Totolapa, Huehuetán, San Fernando, El Bosque, Simojovel, Reforma, Amatlán, Pantelho', Chilón, Pijijiapan, Altamirano, Chenalhó, Palenque, Huehuetán, Ostuacán, Salto de Agua, Acacoyagua, Altamirano - for a second time - and Chamula. Almost half of these changes occurred in the first six months of this year; 18 of the presidents were forced to renounce their positions because of political conflicts.

#### RIGHTS TO LEGAL SECURITY AND LIBERTY IN CHIAPAS

In recent months authorities have attempted to curb abuses committed by the police and correct negligence by the Public Ministry. Nonetheless, the administration of justice and the defense of citizens has not improved structurally

Our Center for Human Rights continues to document numerous

3.- 202,523 or 34.09%

4.- V National Congress of Investigation in Public Health, 1993.

5.- Report of the Centro de Investigaciones Ecológicas del Sureste, Chiapas, 1990.

6.- Servicios Coordinados de Salud Pública

7.- This is also considered to be a result of the chemical contamination in the water that mothers drink during the time of gestation.

violations of individual and collective guarantees. The social situation has not improved significantly, and it seems that certain guarantees won earlier are, in fact, eroding. Continuing political conflicts at the local level demonstrate an alarming level of public discontent due to the incapacity of municipal and state authorities to respond to public problems.

Up to now, not a single violator of human rights in Chiapas has been subject to sanctions, despite recommendations by the National Commission of Human Rights (CNDH) that sanctions be applied. The Commission, established by the Federal Government in June 1990, has not been very effective: according to its president, only 30% of its recommendations have been fully implemented.<sup>8</sup>

The Center for Human Rights, "Fray Bartolomé de las Casas" continues denouncing human rights violations as cases come before it. These include arbitrary executions, torture, illegal or arbitrary detentions, abuse of authority, forced exile, intimidation by authorities, and mistreatment of prisoners. The Center also confronts agrarian conflicts and cases of impunity.

In its last report, the Center denounced 106 cases in which one or more rights of individuals were violated, not counting cases of forced exile which affected 32 families--more than 160 people-- in the first half of this year.<sup>9</sup>

Of the 106 victims whose rights were violated, 73% were indigenous people, 11% were minors, and 8% were peasants.

It is important to emphasize that certain serious violations of human rights occur with disturbing regularity. For example:

**\*Arbitrary detention occurred in 92% of cases presented.**

8.- The National Commission of Human Rights has many limitations: its inability to intervene in violations of political and labor rights are some of the serious limitations that impede thorough investigations in cases in which multiple violations occur. Americas Watch points out that: "The CNDH only examines those cases in which the torture is vastly documented and physical evidence exists. Up to now, they refuse to consider that psychological torture is also a form of torture; the CNDH has never recommended compensation for victims; the CNDH has not protested when torture occurred and charges were issued only for abuse of authority, even when this impedes a victim's ability to obtain reparation under the law for the Prevention and Punishment of Torture; ... the CNDH has issued ambiguous recommendations in politically sensitive matters; ... the CNDH inappropriately attacked independent human rights groups like the Binational Center for Human Rights in Tijuana, Baja California, and the Center for Human Rights Fray Bartolomé de las Casas, in Chiapas." PROCESO No. 870, July 5, 1993.

9.- Forced exile or "expulsions" involve the banishment of indigenous peoples from their land and exclusion from their native communities. For the most part, local authorities are responsible for the violation of human rights and crimes which occur with the expulsions. This violation is practiced in certain indigenous communities of Chiapas, especially San Juan Chamula.



- \*Abuse of authority occurred in 76% of the cases.
- \*Agents of the Public Ministry violated human rights in a high number of cases.
- \*And torture was used to elicit confession with great frequency.

From these facts, it is evident that human rights in the state of Chiapas are in extreme jeopardy. The following case illustrates the severity of the situation.

#### **TYPICAL CASE: TIAJALCH'EN**

This case involves multiple human rights violations, including arbitrary detention, abuse of authority, lack of legal representation for the accused, prolongation of the legal process, negligence in police investigation, partiality in sentencing, and impunity. It is just one illustration of many cases marked by the same type of violations and miscarriage of justice.

#### **The antecedents:**

On December 9, 1992, near the indigenous community Tzajalch'en in the municipality of Chenalhó, three brothers - Vicente, Nicolás, and Lorenzo Gutiérrez Hernández - were attacked with fire arms. One of the brothers died and the other two were seriously wounded. The assailants also destroyed the victims' houses and raped their wives. The roots of this conflict lie in land tenure problems which the Secretary of Agrarian Reform has not resolved, despite a complaint submitted to him over eight years ago. Since the assailants had seized the land in question, they were well known by everyone in the area.

#### **The facts:**

On December 10, 1992, the Trustee and Municipal Judge of Chenalhó fraudulently ordered the apprehension of five men who helped take the wounded to the municipal center. This wrongful detention was motivated by friendship between the local authorities and the actual assailants.

Those detained were handed over to the Public Ministry in the city of San Cristóbal de las Casas on December 10 and brought before the Penal Judge on the 13th. On the 14th and 15th they delivered a statement, prepared without the assistance of a lawyer. These events violate two rights guaranteed by the Mexican constitution: first, the period allowed for a legal investigation was not honored; and second, the right to a lawyer was not observed.

The injured peasants did not identify their attackers among the detainees; nonetheless, in elaborating their statement, they indicated, on the advice of the Trustee and the Municipal Judge, that these were the "intellectual authors," thus contradicting their initial statement. The Public Ministry never went to the site of the events to verify the declarations, nor did they reconstruct the events.



The women affected did not identify those detained as the authors of the crime; instead, they gave the names of the actual assailants. In spite of this, Judge Yañez Mijangos did not reverse the orders of apprehension against the detained. Only under pressure from Amnesty International, the CNDH and the public in the form of demonstrations, did the judge release them weeks later.<sup>10</sup> Influenced by personal interests, the judge issued formal charges against the detained, despite lack of evidence against them.

This clear injustice provoked a significant mobilization among the people of the Municipality, forcing Judge Yañez Mijangos to alter the charges. Then, on January 7 the five detainees were freed for "lack of evidence."<sup>11</sup>

10.- On December 30, more than 600 state police were moved from the community to Tzanemolow, municipality of Chenalhó with the intention of detaining the supposed authors of the crimes of homicide, rape, lesions, attempted homicide, and destruction which were verified on the 9th of December in the neighboring community of Tzajalch'en. In the operation 8 people were detained and members of the state police robbed homes and damaged a local store. The State's Attorney General presented the detainees to the press on the 30th of December. At this so-called "presentation," they issued a press release that declared that they had detained the "intellectual author" and the "actual perpetrators of the crimes which took place in Tzajalch'en on the 9th of December." Four of the nine detained were translated to the jail CERESO 5 in the City of San Cristóbal de las Casas. The other four remained before the Public Ministry of the same city. On January first, two of the remaining were also imprisoned, while those whose participation could not be proved were freed. Nevertheless, the impartiality of the last detentions can be doubted; and again, violations of constitutional guarantees, such as arbitrary detention, absence of lawyers during the declarations, and lack of interpreter, were committed.

11.- On December 21 more than 200 indigenous Tzotziles, representing 36 indigenous communities in the municipio of Chenalho, began marching from Yabteclum to San Cristóbal de Las Casas, a distance of 41 kilometers, to demand liberty for the five detainees. Tuesday, December 22, about three hundred more indigenous joined them. They initiated a sit-in, demanding of the authorities immediate and unconditional liberty for the five indigenous of the community of Tzajalche. On December 24 the more than 500 indigenous Tzotziles who remained in front of the Cathedral made a "Way of the Cross," walking 20 kms. to visit the prisoners in CERESO 5. On December 25 those maintaining the sit-in decided to return to their communities to communicate what had happened, with plans to return to San Cristobal on January 4. In a press conference called to inform the public about the case, Catherine Velado, representative of Amnesty International, said that the information she had on the case of the indigenous Tzotzil community of Tzajalch'en verified irregularities in the judicial process; she qualified the detention of the five innocent as "selective" and "arbitrary." At the same time, she affirmed that the preliminary investigation had been pursued flippantly. And she questioned why, given that the State Attorney himself had called the case "very important," an in-depth investigation at the scene, or a reconstruction of the events, had not taken place. The Amnesty International representative also asked why those actually responsible for the crimes remained unpunished. Why had Judge Miguel Angel Yañez Mijangos signed the order.... against the

### Synthesis

Due to several factors, above all national and international pressure, as well as public indignation, the five detainees were freed. Nevertheless, the authorities responsible for the violations described above were not penalized; there has been no resolution of the irregularities in land tenure which gave rise to these events; the victims have received no compensation; and the actual aggressors have escaped punishment completely. It is clear that judicial authorities in Chiapas were motivated in this case neither by impartiality nor by concern for justice, but rather by political interests. Only as a result of pressure from the public and from non-governmental organizations were the innocent freed.

### GENERAL CONSIDERATIONS

Honorable Chair, members of the Committee, the above case demonstrates that human rights problems endemic to Chiapas are due neither to lack of discipline on the part of a few law enforcement officers, nor to excess or negligence on the part of certain judicial authorities. Rather, it is a question of fundamental problems: the Mexican judicial structure itself denies access to simple justice and the agricultural bureaucracy, (among others) functions in a negligent, biased, and sluggish manner.

In its most recent report, Amnesty International very aptly describes the Public Ministry's monopoly in penal matters in Mexico. I quote: "it is responsible for the judicial police; it monopolizes control over the crimes under its jurisdiction: acquisition, evaluation and eventual presentation of evidence before the courts; recommending terms of sentencing; assuring that judicial laws and the rights of the accused, including the right to appropriate processing, are respected. The Public Ministry is also charged with investigating violations of human rights, including those committed by law enforcement officials who fall under its jurisdiction...." Under these circumstances, when an agent of the Public Ministry has personal interests in a case, or when corruption exists, an innocent detainee has very little chance of going free.

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detained when, to this date, he had not signed orders for the apprehension of those actually responsible for the crimes?...

In the same press conference, Presbyterian Pastor Manuel Pérez Arias, who knows the problems of this region well, clearly named those responsible for the crimes. He noted that the injured and their families belong to his church and that he knows that the problem stemmed from a land dispute that the Agrarian Reform had not been able to solve. He accused political groups of becoming involved with those affected to take advantage of the conflict to advance their own interests. The Human Rights Center "Fray Bartolomé de Las Casas" presented testimonies to the press from Tzajalch'en residents in which they complain of harassment and threats against them from the perpetrators of Tsanemolcom.



Further aggravating this situation, this past August the Federal Congress of the Republic approved an initiative expanding the powers of the Public Ministry on the pretext of combatting organized crime. Many human rights organizations, lawyers and civic groups have declared their opposition to this legislation. These reforms restrict individual guarantees, enable the Public Ministry to initiate detentions without judicial orders, and expand the period during which the Public Ministry can detain a presumed offender.

All these things prompt us to affirm that persistent human rights violations in Chiapas are structurally caused by the judicial system itself. The reforms that the Mexican government has undertaken to avoid such violations are still barely effective. In fact, some of the Constitutional reforms of the last years point not to effective defense of human rights but rather, it seems, just the opposite.

#### CONCLUSION

Honorable Chair, members of the Committee, once again I thank you for this opportunity to present this testimony. In Chiapas, thousands of indigenous people and peasants strive day after day for meaningful change in their living conditions. They also hope for respect for their culture, customs and, above all, their human dignity. We continue accompanying them on their way, united with them in their aspirations.

As the United States Congress considers NAFTA, it must take into account the enormous effects that economic integration will have on the daily lives of millions of impoverished peasants in Mexico whose human rights are already at risk. We must work together to guarantee all human rights for all people.





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